LAWS OF BUSINESS

FOR

All the States and Territories

OF THE UNION

AND THE

DOMINION OF CANADA.

WITH

FORMS AND DIRECTIONS FOR ALL TRANSACTIONS.

AND

ABSTRACTS OF THE LAWS OF ALL THE STATES AND
TERRITORIES ON VARIOUS TOPICS.

BY

THEOPHILUS PARSONS, LL.D.,

LATE PROFESSOR OF LAW IN HARVARD UNIVERSITY, CAMBRIDGE, AND AUTHOR OF TREATISES ON THE
LAW OF CONTRACTS, ON MERCANTILE LAW, ON THE LAW OF PARTNERSHIP, ON THE LAWS
OF PROMISSORY NOTES AND BILLS OF EXCHANGE, ON THE LAW OF INSURANCE,
AND ON THE LAW OF SHIPPING AND ADMIRALTY.

NEW ENLARGED EDITION,
REVISED TO DATE, WITH VALUABLE FRESH CHAPTERS
ON RECENT BUSINESS LEGISLATION.

HARTFORD:
THE S. S. SCRANTON CO.
1909.

ROBERT R. MUNTZ LIBRARY
THE UNIVERSITY OF TEXAS AT TYLER
TYLER, TEXAS 75701

Copyright, 1878, by
THEOPHILUS PARSONS.
Copyright, 1898, by
S. S. SCRANTON & CO.
Copyright, 1900, by
THE S. S. SCRANTON CO.
Copyright, 1907, by
THE S. S. SCRANTON CO.
Copyright, 1908, by
THE S. S. SCRANTON CO.

NEW ENLARGED AND REVISED EDITION.

HF
1235
.P3
1909
UASC

CONTENTS.

CHAPTER I.

THE PURPOSE AND USE OF THIS BOOK.

PAGE.
To fully and clearly explain the laws of Business, ... 23

CHAPTER II.

BUSINESS LAW IN GENERAL.

The Principles on which it rests, ... 25

CHAPTER III.

INFANTS OR MINORS.

Form 1.—Promise in Writing, ... 34

CHAPTER IV.

APPRENTICES.

Forms.

Form 2.—A General Indenture of Apprenticeship as sometimes used in New England, ... 35
3.—Shorter Indenture of Apprenticeship, ... 36

CHAPTER V.

MARRIED WOMEN.

Abstract of the Law of Husband and Wife in the Several States, . 40

Forms.

PAGE.
Form 4.—Indenture to put in Trust the Property of an Unmarried Woman, ... 60
5.—Another Form of Indenture in Trust, for Property of Unmarried Women, ... 64

CHAPTER VI.

AGREEMENT AND ASSENT.

Section I.—The Legal Meaning of Agreement, ... 67
II.—What is an Assent, ... 69
III.—Offers made on Time, ... 70
IV.—A Bargain by Correspondence, ... 71
V.—What Evidence may be received in Reference to a Written Contract, ... 72
VI.—Custom or Usage, ... 74

Forms.

Form 6.—General Agreement, sufficient for many Purposes, . . 77
7.—General Agreement, as used in the Western States, . . 77
8.—General Contract for Mechanic's Work, ... 78
9.—Agreement for Purchase and Sale of Land, in Use in the Middle States, ... 79
10.—Agreement for Sale of Land, in Use in the Western States, 79
11.—Agreement for Warranty Deed, used in the Western States, ... 82
12.—Contract to convey Real Estate, in use in the Middle States, ... 82
13.—Agreement for the Purchase of an Estate, in use in New England, ... 84
14.—Agreement for the Sale of an Estate by Private Contract, 87
15.—Agreement to be signed by an Auctioneer, after a Sale by Auction, ... 87
16.—Agreement to be signed by the Purchaser, after a Sale by Auction, ... 88
17.—Agreement to make an Assignment of a Lease, . . 88
18.—Agreement for making a Quantity of Manufactured Articles, ... 88
19.—Agreement between a Trader and a Bookkeeper, . . 89
20.—Agreement for Damages in laying out or altering Road, 90
21.—Agreement between a Person who is retiring from the Active Part of a Business, and Another who is to conduct the same for their Mutual Benefit, . . . 90

PAGE.
Form 22.—Brief Building Contract, ... 92
23.—Full and Minute Building Contract, ... 93

CHAPTER VII.

CONSIDERATION.

Section I.—The need of a Consideration, ... 97
II.—What is a sufficient Consideration, ... 98
III.—Illegal Consideration, ... 101
IV.—Impossible Consideration, ... 101
V.—Failure of Consideration, ... 102

CHAPTER VIII.

BONDS.

Essentials of a Bond, ... 104
"Condition" of the Bond, ... 105

Forms.

Form 25.—Simple Bond without Condition, ... 106
26.—Bond for Payment of money, with a Condition to that Effect, with Power of Attorney to confess Judgment annexed, ... 106
27.—Bond for Conveyance of a Parcel of Land, . . . 107
28.—Bond for a Deed of Land, with Acknowledgment before Notary Public, ... 108
29.—Bond in Another Form, for Conveyance of Land, with Acknowledgment, ... 109
30.—Bond to Corporation for Payment of Money due for Contribution to Capital Stock, with Power of Attorney to confess Judgment, ... 110

CHAPTER IX.

ASSIGNMENTS.

Instruments to which the term is particularly given, ... 112

Forms.

PAGE.
Form 31.—Brief Form of an Assignment to be indorsed on a note, or any Similar Promise or Agreement, ... 113
32.—General Assignment, with Power of Attorney, . . . 113
33.—Assignment of a Bond, ... 114
34.—Assignment of a Bond, with Power of Attorney, and a Covenant, ... 114
35.—Assignment of a Judgment, in the form of an Indenture, 115
36.—Assignment of Wages, with Power of Attorney, . . 115

CHAPTER X.

SALES OF PERSONAL PROPERTY.

Section I.—What constitutes a Sale, ... 116
II.—Delivery and its Incidents, ... 121
III.—Contracts Void for Illegality or Fraud, ... 126
IV.—Sales with Warranty, ... 128

Forms.

Form 37.—Bill of Sale of Personal Property, ... 131
38.—Bill of Sale of Personal Property, with a Condition to make it a Mortgage with Power of Sale, . . . 132

Section V.—The Sale of One's Business, ... 133

CHAPTER XI.

STOPPAGE IN TRANSITU.

Derivation and Meaning of the Term, ... 134
Rights of Parties in Goods in Transitu, ... 134

CHAPTER XII.

GUARANTY.

Forms.

Form 39.—Guaranty to be indorsed on Note, ... 140
40.—Guaranty of a Note on Separate Paper, . . . 140

PAGE.
Form 41.—Guaranty in Another way, ... 140
42.—Letter of Guaranty, ... 141
43.—Guaranty with Collaterals, authorizing Sale, . . . 141
44.—Guaranty with Collaterals, promising Additional Security, or authorizing Sale, ... 141

CHAPTER XIII.

THE STATUTE OF FRAUDS.

Section I.—Its Purpose and General Provisions, ... 142
II.—Promise to pay the Debt of Another, ... 143
III.—Agreement not to be performed within a year, . . . 145
IV.—The Form and Subject-Matter of Agreement, . . . 146

CHAPTER XIV.

PAYMENT AND TENDER.

Section I.—How Payment may be made, ... 147
II.—Appropriation of Payment, ... 149

CHAPTER XV.

RECEIPTS AND RELEASES.

Remarks on the Nature of Receipts, and Degrees of Fullness thereof, 150

Forms.

Form 45.—Receipt for Money, ... 150
46.—Another Form of Receipt for Money, ... 150
47.—Receipt for Papers or other Articles, ... 150
48.—General Release, ... 151
49.—Mutual General Release by Indenture, ... 152
50.—Release from Creditors to a Debtor, under a Composition, 152
51.—Release of all Legacies, ... 152
52.—Release of a Bond, it being lost, ... 153
53.—Release of a Judgment, ... 154
54.—Release of a Condition, ... 155
55.—Release of a Covenant contained in an Indenture of Lease, 155
56.—Release in Extinguishment of a Power, ... 156

PAGE.
Form 47.—Release from a Lessor to a Lessee (upon his surrendering his Lease) from the Covenants therein, . . . 156
58.—General Release of Dower, ... 157
59.—Release of Dower to the Heir, ... 157
60.—Release of Dower in Consideration of an Annuity given by Will, ... 158
61.—Release of Dower when the Husband of the Widow joins in the Deed, ... 158
62.—Release of a Trust, ... 159
63.—Release of Right to Lands, ... 160
64.—Release between two Traders in Settling Accounts, . 160

CHAPTER XVI.

NOTES OF HAND AND BILLS OF EXCHANGE, DRAFTS AND CHECKS.

Section I.—The Purpose of, and the Parties to, such Papers, . . 161

Forms.

Form 65.—Common Form of a Bill of Exchange, ... 162
66.—Common Form of a Promissory Note, ... 163

Section II.—What is Essential to a Negotiable Note or Bill, . . 168

Forms.

Form 67.—Form of a Note given for a Chattel sold, with a Condition preserving the Ownership of the Seller, . . 170

Section III.—Consideration of Negotiable Paper, ... 176
IV.—Rights and Duties of the Maker, ... 179
V.—Rights and Duties of the Holder of Negotiable Paper, 179
VI.—Rights and Duties of the Indorser, ... 191
VII.—Rights and Duties of the Acceptor, ... 196
VIII.—Acceptance or Payment for Honor, ... 196

Forms.

Form 68.—Judgment Note, with Waiver, ... 198
69.—Judgment Note, with Waiver and Power of Attorney, . 198
70.—Notarial Protest and Notice, ... 200

Abstract of Days of Grace and Holidays in all the States, . . . 201

CHAPTER XVII.

AGENCY.

PAGE.
Section I.—Agency in General, ... 207
II.—How Authority may be given to an Agent, . . . 209
III.—Extent and Duration of Authority, ... 212
IV.—Execution of Authority, ... 214
V.—Liability of an Agent, ... 215
VI.—Rights of Action growing out of Agency, . . . 215
VII.—How a Principal is Affected by the Acts of his Agent, . 216
VIII.—Mutual Rights and Duties of Principal and Agent, . . 217
IX.—Factors and Brokers, ... 220

Forms.

Form 71.—Power of Attorney, ... 223
72.—Power of Substitution, ... 224
73.—Power of Attorney in a Shorter Form, ... 224
74.—Full Power of Attorney to Demand and Recover Debts, . 225
75.—Power of Attorney to sell and deliver Chattels, . . 226
76.—Power of Attorney given by Seller to Buyer, . . . 226
77.—Power of Attorney to sell Shares of Stock, with Appointment by Attorney of Substitute, ... 226
78.—Power of Attorney to subscribe for Stock, . . . 227
79.—Proxy or Power of Attorney to Vote, ... 227
80.—Proxy Revoking all Previous Proxies, ... 227
81.—Proxy with Affidavit of Ownership, in use in New York, . 227
82.—Power to receive Dividend, ... 228

CHAPTER XVIII.

PARTNERSHIP.

Section I.—What a Partnership is, ... 228
II.—How a Partnership may be Formed, ... 229
III.—How a Partnership may be Dissolved, ... 231
IV.—Property of the Partnership, ... 233
V.—Authority of each Partner, and the Joint Liability of the Partnership, ... 234
VI.—Remedies of Partners against each other, ... 239
VII.—Right of the Firm against Third Parties, ... 240

PAGE.
Section VIII.—Rights of Creditors in Respect to Funds, . . . 241
IX.—Effects of Dissolution, ... 243
X.—Limited Partnership, ... 244

Forms.

Form 83.—Articles of Copartnership between two Tradesmen, . . 245
84.—Short Form of Articles of Copartnership, ... 247
85.—Certificate of a Limited Partnership, with Acknowledgment and Oath, ... 249

CHAPTER XIX.

ARBITRATION.

Section I.—The Submission and Award, ... 250
II.—Revocation of a Submission to Arbitrators, . . . 254

Forms.

Form 86.—Simple Agreement to Refer, ... 256
87.—Arbitration Bond. One or more Arbitrators, . . . 256
88.—Award of Arbitrators, ... 257

CHAPTER XX.

THE CARRIAGE OF GOODS AND PASSENGERS.

Section I.—A Private Carrier, ... 257
II.—The Common Carrier, ... 258
III.—Obligation of Common Carrier to receive and carry Goods and Passengers, ... 261
IV.—The Lien of the Common Carrier, ... 266
V.—Liability of the Common Carrier, ... 266
VI.—The Carrier of Passengers, ... 268
VII.—Notice by the Carrier Respecting his Liability, . . . 269
VIII.—The Carrier's Liability for Goods carried by Passengers, . 271

Forms.

Form 89.—Steam Packet Company's Receipt, ... 274
90.—Express Company's Receipt, ... 274

CHAPTER XXI.

PAGE

HOTEL-KEEPERS, INN-KEEPERS, AND BOARDING-HOUSE-KEEPERS.

The Rights, Duties, and Liabilities of, and the distinction between, Hotel-keepers and Boarding-house-keepers, ... 276

CHAPTER XXII.

LIMITATIONS.

Section I.—Statute of Limitations, ... 278
II.—Construction of the Statute, ... 279
III.—The New Promise, ... 280
IV.—Part Payment, ... 281
V.—Some Statutory Exceptions, ... 282
VI.—When the Period of Limitation begins. 283
VII.—The Statute does not affect Collateral Security, . . 284

Abstract of the Statutes of Limitation of all the States, . . . 284

CHAPTER XXIII.

INTEREST AND USURY.

Section I.—What Interest is, and When it is Due, ... 300
II.—Charge for Risk or for Service, ... 305
III.—Sale of Notes, ... 306
IV.—Compound Interest, ... 307

Abstract of the Usury Laws of the States, ... 308

CHAPTER XXIV.

THE LAW OF PLACE.

Section I.—What is meant by the Law of Place, ... 312
II.—General Principles of the Law of Place, ... 312
III.—Place of the Contract, ... 314
IV.—Domicil, ... 315

CHAPTER XXV.

THE LAW OF SHIPPING.

PAGE
Section I.—Ownership and Transfer of Ships, ... 318
II.—Transfer of Property in a Ship, ... 321
III.—Part-Owners, ... 323
IV.—Liability of Mortgagees, ... 325
V.—Contract of Bottomry, ... 325
VI.—Employment of a Ship by the Owner, ... 327
VII.—Charter Parties, ... 334
VIII.—General Average, ... 338
IX.—Salvage, ... 342
X.—Navigation of the Ship, ... 346
XI.—Seamen, ... 350
XII.—Pilots, ... 353
XIII.—Material-Men, ... 354

Forms.

Form 91.—Bill of Sale of Vessel, ... 355
92.—Mortgage of a Vessel, ... 357
93.—Charter Party, ... 359
94.—Bill of Lading, ... 360
95.—Shipping Articles in Common Use, ... 361
96.—Bottomry Bond, ... 364
97.—Oath or Affirmation of Consignee or Agent, . . . 365
98.—Custom-House Power of Attorney, No. 201, . . . 366
99.—Maritime Protest, ... 367
100.—Steamboat Warrant, as used in the Western States, . 369

CHAPTER XXVI.

MARINE INSURANCE.

Section I.—How the Contract of Insurance is made, ... 369
II.—Interest of the Insured, ... 372
III.—Interest which may be insured, ... 374
IV.—Prior Insurance, ... 377
V.—Double Insurance and Re-insurance, ... 378
VI.—Memorandum, ... 379
VII.—Express Warranties, ... 379
VIII.—Implied Warranties, ... 381

PAGE.
Section IX.—Representation and Concealment, ... 383
X.—What things should be communicated, ... 384
XI.—Premium, ... 385
XII.—Description of the Property Insured, ... 386
XIII.—Perils covered by the Policy, ... 387
XIV.—Perils of the Sea, ... 388
XV.—Collision, ... 389
XVI.—Fire, ... 389
XVII.—Piracy, Robbery, or Theft, ... 389
XVIII.—Barratry, ... 390
XIX.—Capture, Arrest, and Detention, ... 390
XX.—General Clause, ... 391
XXI.—Prohibited Trade, ... 391
XXII.—Deviation, ... 392
XXIII.—Termini of the Voyage, and of the Risk, . . . 394
XXIV.—Total Loss and Abandonment, ... 396

Form.

Form 101.—Abandonment, ... 399

Section XXV.—General Average, ... 402
XXVI.—Partial Loss, ... 403

CHAPTER XXVII.

FIRE INSURANCE.

Section I.—Usual Subject and Form of the Insurance, ... 405
II.—Construction of Policies against Fire, ... 408
III.—Interest of the Insured, ... 414
IV.—Double Insurance, ... 416
V.—Warranty and Representation, ... 417
VI.—Risk incurred by the Insured, ... 421
VII.—Valuation, ... 422
VIII.—Alienation, ... 423
IX.—Notice and Proof, ... 424
X.—Adjustment and Loss, ... 425

Forms.

Form 102.—Immediate Notice of Loss, ... 426
103.—Notice, with Certificate of Magistrate, ... 427
104.—Assignment of a Policy to be indorsed thereon, . . 428
105.—Transfer and Assignment of Policy, ... 429

CHAPTER XXVIII.

LIFE INSURANCE.

PAGE.
Section I.—Purpose and Method of Life Insurance, ... 430
II.—Premium, ... 431
III.—Restrictions and Exceptions in Life Policies, . . . 432
IV.—Interest of the Insured, ... 434
V.—Assignment of a Life Policy, ... 434
VI.—Warranty, Representation, and Concealment, . . . 435
VII.—Insurance against Accident, Disease, and Dishonesty of Servants, ... 439

CHAPTER XXIX.

DEEDS CONVEYING LAND.

Section I.—What is Essential to such Deeds, ... 440
II.—Usual Clauses in Deeds, ... 445

Forms.

Form 106.—Deed Poll of Warranty, in Common use in New England, 452
107.—Deed of Gift by Indenture, without any Warranty whatever, 453
108.—Deed of Bargain and Sale, without any Warranty, . . 454
109.—Quit-Claim Deed, without any Warranty, ... 455
110.—Deed Poll of Release and Conveyance; short Form, . 456
111.—Deed, with Special Warranty against the Grantor only, . 457
112.—Quit-Claim Deed (long Form), Homestead Waiver, . . 458
113.—Deed, with Covenant against Grantor, without Release of Homestead or Dower, ... 459
114.—Separate Relinquishment of Homestead and Dower in Land sold under Execution, ... 461
115.—Full Warranty Deed, by Indenture, without Release of Homestead or Dower, ... 462
116.—Warranty Deed (short Form), with release of Homestead and Dower, ... 464
117.—Warranty Deed, with Covenant against Nuisances, without Release of Homestead or Dower, ... 465
118-142.—Forms of Deeds in use in various States, . . 467—500
143.—Bond for a Deed, ... 501
144.—Contract for Sale of Land, with Penal Obligation, . . 501

PAGE.
Form 145.—Power of Attorney to sell Lands, ... 502
146.—Trust Deed for the Benefit of a Wife, or some other Person, ... 504
147.—Trust Deed to secure Payment of a Note without Release of Homestead or Dower, ... 505
148.—Deed of Trust to secure a Debt (fuller Form), and with Release of Dower, ... 507
149.—Trust Deed to secure a Note (shorter Form), but with Warranty, and Release of Homestead and Dower, . . 510
150.—Deed from Trustees, ... 512
151.—Deed of Master in Chancery, ... 513
152.—Sheriff's Deed on Execution, in use in the Western States, ... 514
153.—Sheriff's Deed, in use in New England, ... 515
154.—Sheriff's Tax Deed, in use in the Western States, . 517
155.—Deed of Executor in use in the Eastern States, . . 518
156.—Deed of Executor, in use in the Middle States, . . 519
158.—Deed of Administrator of Intestate, ... 521
160.—Deed of Referee on Foreclosure, in use in the Middle States, ... 524
161.—Deed of Collector of Taxes, ... 526
162.—Deed of Assignee, in use in the Western States, . . 527
163.—Acknowledgment of Grantor and Wife identified before Commissioner for another State, ... 529
164-168.—Deeds in use in Canada, ... 530-536

Abstract of the Laws of all the States Relating to Deeds and their Requirements, ... 538

CHAPTER XXX.

MORTGAGES OF LAND.

Purpose of a Mortgage, ... 542
Rights of Mortgagor and Mortgagee, ... 543

Forms.

Form 169.—Promissory Note, to be secured by Mortgage, . . . 546
170.—Bond, to be secured by a Mortgage, ... 546
171.—Mortgage, without Power of Sale and Without Warranty, but with Release of Homestead and Dower, . 547

PAGE.
Form 172.—Mortgage, with Power of Sale, to secure a Bond, without Release of Dower, ... 548
173.—Mortgage to secure a Debt, with Power of Sale—short Form, ... 550
174.—Mortgage to secure a Debt (fuller Form), with Power of Sale, ... 551
175.—Deed Poll of Mortgage, with Power to Sell, and Insurance Clause, and Release of Homestead and Dower, . . 552
176.—Mortgage by Indenture, with Power of Sale, and Interest and Insurance Clause, to secure a Bond, . . . 554
177.—Mortgage to Executors, with Power of Sale, . . . 557
178.—Mortgage of a Lease, ... 559
179.—Mortgagee's Deed, under a Power of Sale, . . . 561
180–199.—Mortgage Deeds in use in several States, . . 562–589
200.—Assignment of Mortgage—short Form, ... 590
201.—Assignment of Mortgage, with Power of Attorney, . . 590
202.—Assignment of Mortgage by a Corporation, . . . 591
203.—Discharge of Mortgage—short Form, ... 592
204.—Release and Quitclaim of Mortgage, as used in the Western States, ... 593
205.—Discharge of Mortgage, as used in the Middle States, . 593
206.—Discharge and Satisfaction of Mortgage by a Corporation, ... 594
207.—Release of a part of the Mortgaged Premises, . . 594
208.—Deed Extending a Mortgage, ... 596
209, 210, 211.—Mortgage Deeds in use in Canada, . . 597–600

CHAPTER XXXI.

LEASES.

Definition of the Term, ... 604
Rights and Obligations of the Parties, ... 605
Fixtures, ... 608
Digest of Leases, ... 609

Forms.

Form 212.—Short Form of a Lease, ... 610
213.—Fuller Form, with a Provision for Abatement of Rent, . 610
214.—Short Form of Lease, in use in the Western States, . . 612
215.—Lease of City Property, in use in Chicago, . . . 613
216.—Lease, with Provisions for Taxes and Assessments, . 615

PAGE.
Form 217.—Lease, with Covenants about Water Rates, and Injury by Fire, in use in New York, ... 617
218.—Lease by Grant, in use in the Western States, ... 619
219.—Lease by Certificate, with Surety, ... 620
220.—Lease of City Property, in use in St. Louis, . . . 621
221.—What is called a Country Lease, in use in the Western States, ... 622
222.—A Ground Lease, ... 624
223.—Assignment of Lease, and Ground Rent, ... 627
224.—Lease containing Chattel Mortgage Covenants to secure Rent, ... 629
225.—A Building Lease, ... 632
226.—A Mining Lease, ... 633
227.—Lease of Land supposed to contain Oil, Salt, or other Minerals, ... 634
228.—Assignment of a Lease, ... 636
229.—Landlord's Notice to quit for Non-Payment of Rent—short Form, ... 636
230.—Landlord's Notice to quit for Non-Payment of Rent—another Form, ... 637
231.—Landlord's Notice to pay Rent due, or quit, . . . 637
232.—Landlord's Notice to leave at End of Term, . . . 637
233.—Landlord's Notice to determine a Tenancy at Will, . . 638
234.—Receipt for Rent, in use in New York, ... 638
235–239.—Leases in use in Canada, ... 638-644

CHAPTER XXXII.

MORTGAGES OF GOODS AND CHATTELS, OR PERSONAL PROPERTY.

The Pledge of Personal Property, ... 647

Forms.

Form 240.—Mortgage of Personal Property, ... 649
241.—Mortgage of Personal Property, with Warranty, . . 649
242.—Mortgage of Personal Property, with Power of Sale, . 651
243.—Mortgage of Personal Property, with Power of Sale—another Form, ... 652

Abstract of the Laws of the States respecting Chattel Mortgages, . 653

CHAPTER XXXIII.

LAW OF PATENTS.

PAGE.
What may be Patented, 664
Who is Entitled to a Patent, 664
What will Prevent the Granting of a Patent, 665
Mode of Proceeding to obtain a Patent, 665

Forms.

Form 244.—Form of Petition, 665
245.—Specification to accompany a Petition, 667
246.—Form of Oath, 668
Drawings, 669
Model, 670
Completion of the Application, 670
Examination, 670
Rejections, 671
Withdrawals, 672
Appeals, 672
Form 247.—Appeal to the Examiner-in-chief, 673
Interferences, 674
Re-Issues, 675
Form 248.—Petition, 677
249.—Oath to be appended to Application for Re-issue, 677
Disclaimers, 678
Form 250.—Disclaimer 678
Extensions, 679
Designs, 678
Form 251.—Application for Patents of Designs, 680
252.—Specifications for Designs, 680
Form of Oath, 681
Foreign Patents, 682
Caveats, 682
Form 254.—Form of a Caveat, 682
Repayment of Money, 683
Assignments and Grants, 683
Form 255.—Assignment of the Entire Interest in Letters-Patent before obtaining the same, and to be recorded preparatory thereto, 684

PAGE
Form 256.—Grant of a Partial Right in a Patent, ... 685
Forms of License, ... 686
The Office Fees, and how Payable, ... 687
Taking and transmitting Testimony, ... 688
Canada, Patent Law of, ... 688
Trade-Marks, ... 689

CHAPTER XXXIV.

LAW OF COPYRIGHT.

Revised Statutes of the United States relating to Copyright, Sections 4948 to 4971, ... 696
Copyright Law of the Dominion of Canada, ... 700

Forms.

Form 260.—Agreement between Author and Publisher—short Form, 700
261.—Agreement between Author and Publisher—fuller Form, 701
262.—Assignment of a Copyright, ... 702

CHAPTER XXXV.

MEANS PROVIDED FOR THE RECOVERY AND COLLECTION OF DEBTS.

1.—Arrest and Imprisonment, ... 703
2.—Trustee Process, ... 703
3.—The Homestead, ... 704
Abstract of Laws relating to the Collection of Debts, ... 705

CHAPTER XXXVI.

LIENS OF MECHANICS AND MATERIAL-MEN FOR THEIR WAGES AND MATERIALS.

What is a Lien, ... 757

Forms.

Form 263.—Notice under Mechanic's Lien Law, ... 758
264.—Bill of Particulars of Mechanic's Claim, ... 759
265.—Release and Discharge of a Mechanic's Lien, ... 759
266.—Release and Discharge of a Mechanic's Lien, another Form, ... 760

Abstract of the Laws of all the States relating to Mechanics' Liens, . 761

CHAPTER XXXVII.

THE DISPOSAL OF PROPERTY BY WILL.

PAGE.
Section I.—Wills, ... 776
II.—Codicils, ... 779
III.—Revocation of Wills, ... 780

Form 267.—A Will, ... 781
268.—Copy of a fuller form of a Will, ... 782

CHAPTER XXXVIII.

EXECUTORS AND ADMINISTRATORS.

Powers and Duties of Executors and Administrators, . . . 790

CHAPTER XXXIX.

GUARDIANS.

The Rights and Duties, Powers and Liabilities, of Guardians, . 794

CHAPTER XL.

CONSTRUCTION AND INTERPRETATION OF CONTRACTS.

Section I.—General Purpose and Principles of Construction, . . 796
II.—Some of the General Rules of Construction, . . . 797
III.—On Presumption of Law, ... 801
IV.—Of the Effect of Custom and Usage, ... 802
V.—On the Admissibility of Extrinsic Evidence, . . . 805

CHAPTER XLI.

LEGAL RIGHTS AND OBLIGATIONS OF FARMERS.

Section I.—His Title to his Farm, ... 809
Subsection 1.—Possession, ... 809
2.—Inheritance, ... 810
3.—Purchase, ... 810
4.—Sales of Land at Auction, ... 811

PAGE
Section II.—What one Takes by the Deed of his Farm, ... 812
Subsection 1.—Boundaries and Descriptions, ... 812
2.—Contents, ... 813
3.—Fixtures, ... 814
4.—Manure, ... 815
5.—Rocks, Stones, and Soil, ... 815
6.—Adjoining Roads, ... 816
7.—Trees, ... 816
Section III.—Trespassing on the Farm, ... 817
Subsection 1.—Who is a Trespasser, ... 817
2.—Of the Right of a Farmer to Order off Trespassers, 818
Section IV.—Farm Ways, ... 818
V.—Water Rights, ... 819
VI.—Fire, ... 819
VII.—Game Animals, ... 821
VIII.—Domestic Animals, ... 822
IX.—Sale with Warranty of Animals, Seeds, Fertilizers, . 823
Subsection 1.—Of Animals, ... 823
2.—Of Seeds, ... 824
3.—Of Fertilizers, ... 825
Section X.—Hiring of Help, ... 825
Subsection 1.—Rights and Duties of Help, ... 826
2.—Liability of Farmer for Wrong-doing of Help, . 827
Section XI.—Hiring of a Farm, ... 828
Subsection 1.—Hiring by Lease, ... 829
2.—Renewal of Lease, ... 829
3.—Remedy for non-Payment of Rent, ... 829
4.—Right to vacate Premises and Give up Farm, . . 830
5.—Apportionment of Rent, ... 830
6.—Cultivation of the Farm, ... 831
Form.—A Form of a Lease of a Farm, ... 832
7.—Hiring on Shares, ... 833
INDEX, ... 834
To Forms, ... 860

APPENDICES:

Bailment, ... 865
Corporations: Personal Liability, ... 867
Employers' Liability Laws, ... 872
Pure Food and Drug Law, ... 874
Glossary of Law Terms, ... 879
Forms for Depositions and Affidavits, ... 901
Interest Tables, ... 905

PREFACE NOTE.

"The Laws of Business," says an eminent jurist in discussing its merits, "is a work which, through its former editions, has already acquired a widespread reputation for its practical usefulness both to the professional and non-professional man."

Its continued popularity with the legal profession as well as among conveyancers, commissioners, notaries, justices, bankers, and business men of every class is a convincing proof that it has filled an actual want. In preparing the present edition such additions and improvements have been made as seemed likely to add to the practical value of the work, and no efforts have been spared to make it a safe guide in every business question which is likely to arise in any State of the Union. Large additions have been made to the former editions, especially of Abstracts of the Laws of all the States, in relation to such matters as Deeds of all kinds, Chattel Mortgages, Leases, Wills, Mechanics Liens, Days of Grace and Holidays, Statutes of Limitations, Actions, Recovery and Collection of Debts, Attachment, Arrest, Garnishment or Trustee Process, Judgment, Exemptions, Stay Laws, Homestead Rights, etc., etc., and a new chapter on the Legal Rights and Obligations of Farmers; Help, and their rights and duties; Trespassers, Adjoining Roads, Rivers and Ponds, Fences, Farmways, Repairs, Fixtures, and many other topics. The Forms have been so multiplied as to embrace almost every description of contract and conveyance in common use, from an ordinary note of hand to a corporation deed. The new Forms for taking depositions and affidavits as well as corporation acknowledgments will, it is hoped, be of special service to commissioners, notaries, and justices, while the many new Forms for other purposes will meet the requirements of the practical business man. Some of these Forms will be found brief and simple; others, especially those in relation to real estate, are full and minute. No one but a lawyer knows how necessary it is to use the technical, customary, and established language of Form, every phrase of which has passed through repeated litigation, and has thus acquired a certain meaning. Much in such Forms will seem, to those ignorant of law, to be wordy and full of repetition; but, if the Forms are made apparently more simple by omissions and abbreviations, they *may* be good, and they *may not;* and whether they are or not cannot be known except by litigation. And he must be a bold lawyer who would undertake to prefer Forms of his own make to those which the Courts and common use have sanctioned. Wherever possible, Forms have been given which were thus sanctioned, because the very object of this book is to enable persons to use it to conduct their business affairs with ease, safety, and certainty.

We think such a book possible, and venture to hope that we have made such a book. We know only that whatever labor and care could do to make the book useful and safe, has been done. In this edition we have brought the law down to the present time, have revised the whole work, and, as already said, have made large additions which will, we hope, increase its usefulness and value.

THE LAWS OF BUSINESS

CHAPTER I.

THE PURPOSE AND USE OF THIS BOOK.

THE title of this work indicates, to some extent, its purpose and character; but, as they are in certain respects peculiar, it is thought that some remarks respecting them may make the volume more useful. Many years ago, after more than twenty-five years of practice at the bar, I accepted the office of Dane Professor in the Law School of Harvard University. I employed whatever leisure the duties of that office left me, in preparing a series of text-books on Commercial Law. I have published many volumes; and the manner in which they have been received by my professional brethren, calls for my most grateful acknowledgments. One of those works was entitled "The Elements of Mercantile Law," and was intended as a general epitome of Commercial Law. I began it mainly for the use of lawyers, but at the same time hoping that it might be so written as to be useful to others, who were not lawyers. Before I had made much progress in it, the hope that *one book* could answer these two purposes faded away; and I finally made that work exclusively for lawyers. But the circumstance that many persons who were not lawyers, and did not intend to be, have bought my works,—the remarks that have reached me in relation to them, and particularly in reference to that above mentioned, and many other kindred facts,—have given additional strength to a belief that led me to prepare this volume, for wide and general use.

That belief is, that there is a strong and growing disposition, among the men of business of this country, to understand the laws of business. This disposition, and the actual diffusion of this knowledge, have both greatly increased of late years, and I believe could not have been arrested; for this progress is one element of advancing and improving civilization; and I think it cannot now be prevented.

The institutions and characteristics of this country have their bearing upon this question. We have no sovereign but the law; or rather the people is the sovereign, and the law is their only utterance. It is a sense of this that has here transferred, in some degree at least, the loyalty which in the kingdoms of the Old World attaches to a person, to the law itself, using this word in its most comprehensive sense. This is a good thing; not because the law is always wise and good, but because it will more probably become wise and good, if the whole community recognize it as entitled to obedience, and *therefore* entitled to their constant, earnest, and vigorous endeavors to cure its defects, and bring it into harmony with those principles of truth and justice of which it should be the expression. This great duty rests upon us with the stronger obligation because of our greater intelligence and activity of mind, or more general education and wider extent of common knowledge; all which are none the less facts, although they are sometimes used as mere food for vanity, or as topics for adulation. And all these things together seem to lead to the conclusion, that here and now proper efforts should be made to supply all of the community who ask for it,—with accurate and practical information concerning those laws which are of the most immediate concern to them.

So far as concerns the whole people, their wish, if expressed in the simplest terms, would undoubtedly be, to know the laws which must regulate their conduct and determine their rights. This wish admits of but one question; it is, How far is this thing practicable? for so far as it is, its propriety and expediency can hardly be denied or doubted. Indeed, they who would most strenuously oppose any effort to teach the people the law, would do so only on the ground that it is impossible to give to the public any knowledge of this kind which would be wide enough and accurate enough for use. They would think that the very endeavor to learn the law, by persons the main business of whose lives must be of a very different kind, would lead only to a superficial and erroneous view of the subject; and this, under the name of knowledge, is only the most dangerous ignorance.

We should, however, remember, that the people generally, here and elsewhere, must necessarily know a certain amount of law, for without this they cannot live safely in society. For example, men in business must know something of the most general laws of business; as how to conduct their sales, how to make notes, how to collect them, and the like; and all men must know so much of ordinary law as protects and defines their common and universal rights. Moreover, it will probably be admitted that important mistakes, leading to much loss and difficulty, are every day made, because many do not know those general principles or rules of law which some do know, and which every man in business might know. The question, therefore, can only be, how much of law it is possible and desirable for men in business to learn; and what is their best way of learning it.

Here let me remark, that few persons, who have not had occasion to study and to teach Commercial Law as a whole, are aware of that unity and harmony of its principles, which make it indeed a *system* of laws; or of the prevailing simplicity and reasonableness of its rules. An eminent English lawyer has said, that it was astonishing within how small a space all the *principles* of commercial law may be compacted. It is equally true, that the laws of business are generally free from mere technicality and obscurity; and the reason is, that they are for the most part, and substantially, nothing more than the actual practice of the business community, expressed in rules and maxims, and invested with the authority of law.

The knowledge which a trader acquires of the laws of trade need not, at all events, be superficial; for a knowledge of principles, and an intelligent appreciation of them, however limited it may be, should not be regarded as superficial. And these limits need not be narrow. The extent of this knowledge, and its accuracy, thoroughness, and utility, must obviously depend upon the books from which it is acquired, and upon the manner of using those books.

Considerations of this kind led me to the belief, that it was *possible* to make a book, which should place within the apprehension of every intelligent trader, and of every young man who proposes to engage in any department of business (and this now means almost every man in the community), at the cost of no more time than every one can conveniently give to it, a *useful* knowledge of *all* the elements, or general rules and principles, of the Laws of Business.

In other words, I thought it an undeserved reproach of our Laws of Business, to say that they were not intelligible by all, if stated with simplicity and accuracy ; and an equally undeserved reproach of our Men of Business, to say that they could not comprehend laws, which were made for them, and were intelligible in themselves, and plainly stated. It seemed to me, therefore, that the time had come, in this country, for a book which no one has ever attempted to make anywhere heretofore. This book should contain all the principles of all the branches of the laws which regulate the common transactions of life, stated with all the accuracy that care and labor could insure in any book, and so stated that any man of good capacity, with reasonable effort, might understand all of them ; and might, with the help of the Index, find in the volume a true and intelligible answer to the questions which every day arise ; and might, if he were willing to make a regular study of the whole book in course, become acquainted with the rules, and the reasons of the rules, by which all business may be safely conducted. And this book I have endeavored to make. I have compiled it, mainly from the law-books I have already made for the profession. If they are accurate and trustworthy, this is so ; and I may be permitted to say, that whatever earnest endeavors could do to make those books trustworthy was done ; and that accumulated testimony, which I have no right to disregard, encourages me to hope that I have not labored in this respect in vain.

I have made changes which seemed to be required by the intended adaptation of this book to all men and not to lawyers only. These are, first, the omission of citations and references to reports and authorities; next, the addition of some elementary rules and principles and definitions, which would not be necessary in a book for lawyers only; and lastly, the use of common or non-professional language, the general omission of merely technical words, and the full explanation of such words when they are used.

If there are those who are preparing for a life of business, or are now engaged in it, who will study this volume, in course,—dwelling on what seems most important, and examining with care what seems obscure,—I venture to hope that they will find the work so arranged, and the meaning so expressed, that what comes before explains what follows, and every part of it will be intelligible. At the same time, I have labored to make everything plain *by itself*, as far as that was possible, that it might not disappoint those who, without reading it in course, look into it for an answer to questions as they arise. And for such persons I have endeavored to have the Index of Subjects (at the end of the book) exceedingly full and minute.

I have added a great variety of Forms. Of course no collection of Forms could be made large enough to meet the exact facts of every case that can arise. But it is possible to give accurate Forms *of all sorts;* and any person can select the Form *nearest* to his particular need, and easily make the alterations which the facts of his case require.

CHAPTER II.

BUSINESS LAW IN GENERAL.

ALL law is divided into what it called, in law books, common law and statute law. We have legislatures, and our fathers had them; and a very large proportion of the laws now binding upon us were made by those legislatures in a formal and regular way. All these are Statutes; and taken altogether, they compose the Statute Law. Besides this, however, there is another very large portion of our law which was not enacted by our legislatures; and it is called the Common Law. In fewer words, all law was regularly enacted, or it was not. If it was, it is statute law; if it was not so enacted, it is common law.

The common law of the several States of this country consists, in the first place, of all the law of England—whether statute or common there—which was in force in that State at the time of our independence, and recognized by our courts, and which has not since been repealed or disused. And next, of all those universal usages, and all those inferences from, or applications of, established law, which courts in this country have recognized as having among us the force of law. For this common law there is no authority excepting the decisions of the courts; and we have no certain means of knowing what is or is not a part of the common law, excepting by looking for it in those decisions. Hence the value and importance of the reported decisions, which are published by official reporters in most of our States.

A very important part of the common law, especially to all men in business, is what is called, by an ancient phrase, the Law-Merchant. By this is meant the law of merchants; or, more accurately, the law of mercantile transactions; and by this again is meant all that branch of the law, and all those principles and rules, which govern mercantile transactions of any kind. This great department of the law derives its force in part from statutory enactments, but in far greater part from the well-established usages of merchants, which have been adopted, sanctioned, and confirmed by the courts. For example, a large proportion of the law of factors and brokers, most of that of shipping and of insurance, and nearly all the peculiar rules applicable to negotiable paper (or promissory notes and bills of exchange payable to order), belong distinctly to the Law-Merchant.

The courts of this country have always acknowledged that a custom of merchants, if it were proved to be so nearly universal and so long established that it must be considered that all merchants know it and make their bargains with reference to it, constitutes a part of the law-merchant. And the law-merchant is itself a part of the common law, and therefore has the whole obligatory force of law. This would not be true, if the custom was one which violated statute law, or the obvious principles of public policy or common honesty. But we may suppose that no custom of this kind would ever be so generally adopted and established as to come before the courts with any claim for recognition as law.

A great deal of the language of every art or science or profession is technical (indeed, *technical* means belonging to some *art*), and is peculiar to it, and may not be understood by those who do not pursue the business to which it belongs. This is as true of law as of everything else. In this work, however, I have avoided as far as possible mere law-words; and when I have used them have explained them at the time. There are some, however, which cannot be dropped: they express exactly what is meant, and we cannot express it without them, unless by long and awkward sentences. A good instance of this is in those words which end in *er* (or *or*) and in *ee*. As for example, promisor and promisee, vendor and vendee, indorser and indorsee. These terminations are derived from the Norman-French, which was, for a long time, the language of the courts and of the law in England. And it might seem that we had just as good terminations in English, in *er* and *ed*, which mean the same thing. But it is not so. Originally they meant the same thing, but they do not now; for both *er* and *ee* are applied in law to persons, and *ed* to things; so that we want all three terminations. For example, indors*er* means the man who indorses; indors*ee* means the man to whom the indorsement is made; but the note itself we say is indors*ed*. So vend*or* means the man who sells, vend*ee* means the man to whom something is sold, and the thing sold is vend*ed*. And the promis*or* makes the promise, the promis*ee* receives it, and the thing to be done is promis*ed*. We have retained not only this phraseology, but some other words or phrases, of which similar things might be said.

CHAPTER III.

INFANTS, OR MINORS.

SECTION I.

GENERALLY, all persons may bind themselves by contracts. But some are incapacitated. The incapacity may arise from many causes; as from insanity; or from being under guardianship; or from alienage in time of war; or from infancy; or from marriage.

All persons are infants, in law, until the age of twenty-one. But in many of the States, women are considered of full age at eighteen, for some purposes.

The rule of law is, that a person becomes of age at the beginning of the day before his twenty-first birthday. This rule opposes the common notion, and it rests on no very good reason, but on ancient authority and constant repetition. The reason assigned is, that the law takes no notice of parts of a day. The effect of the rule is, that a person born on the 9th of May in the year 1840, becomes of age at the beginning of the 8th of May, 1861, and may sign a note, or do any thing, with the full power of a person of age, on any hour of that day.

The contract of an infant (if not for necessaries) is voidable, but not void. That is, he may disavow it, and so annul it, either before his majority, or within a reasonable time after it. As he may avoid it, so he may ratify and confirm it. He may do this by word only. But mere acknowledgment that the debt exists is not enough. It must be *substantially*, if not *in form*, a new promise. In England, and a few of our States, it is provided by statute, that this confirmation can only be by a new promise in writing, signed by the promisor. The rule seems to be useful, and we think it will be more widely adopted.

It must be a promise by the party, after full age, to pay the debt; or such a recognition of the debt as may fairly be understood by the creditor as expressive of the intention to pay it; for this would be a promise by implication. There are no particular words or phrases which the law requires or favors as a confirmation. No ratification or confirmation can be used in any action which was brought before the ratification was made. It must also be made voluntarily, and with the purpose of assuming a liability from which he knows that the law has discharged him. And if it be a conditional promise, the party who would enforce it must prove the condition to be fulfilled. Thus, if the plaintiff relies on a new promise, and asserts and proves that the defendant said, after full age, "I will pay when I am able," he must also prove that the defendant was able to pay when the action was brought.

If an infant's contract is not avoided, it remains in force. And it may be confirmed without words; and the question sometimes occurs, whether confirmation by mere silence, after a person arrives at full age, prevents him from avoiding his contract made during his infancy. As a general rule, mere silence, or the absence of disaffirmance, is not a confirmation; because it is time to disaffirm the contract when its enforcement is sought.

But if an infant buys property, any unequivocal act of ownership after majority—as selling it, for example—is a confirmation of the purchase. And, generally, a silent continued possession and use of the thing obtained by the contract is evidence of a confirmation; therefore, if an infant buys a horse, and gives his note for it, and after he is of age the seller puts the note in suit, the buyer may return the horse and refuse to pay the note; but if he keeps the horse, this is considered evidence of a confirmation of the note. The evidence of confirmation is much stronger if there be a refusal to re-deliver the thing when it can be re-delivered; and is generally conclusive, when the conduct of the party must either be construed as a confirmation, or, if not so construed, must be regarded as fraudulent, or wrongful. Thus, where an infant purchased a potash-kettle, and gave his promissory note for the price, it being agreed by the parties that he might try the kettle, and return it if it did not suit him; and the vendor, after the infant became of age, requested him to return the kettle if he did not intend to keep it; but he retained and used it a month or two afterwards. The court held that this was a sufficient ratification of the contract, and that an action might be sustained on the note.

The great exception to the rule that an infant's contracts are voidable, is when the promise or contract is for necessaries. The rule itself is for the benefit and protection of the infant, and the same reason causes the exception; for it cannot be for the benefit of the infant that he should be unable to purchase food, raiment, and shelter, on a credit, if he has no funds. The same reason, however, enlarges this exception, until it covers not only strict necessaries, or those without which the infant might perish, or would certainly be uncomfortable, but all those things which are certainly appropriate to his person, station, and means.

There is no exact dividing line which could make this definition precise. But it is settled that mercantile contracts, as of partnership, purchase and sale of merchandise, signing notes and bills, are not necessaries, and that all such contracts are voidable by the infant. So, if he gives his note even for necessaries, he is not bound by it; but may defend against it on the ground that it was for more than their true value; and the jury will be instructed to give against him only a verdict for so much as the necessaries were worth.

If he borrows money, to be expended in the purchase of necessaries, and gives his note, the debt, or the note, has been held, at law, voidable by the infant. But our courts would now hold an infant liable for such a debt; and it is well settled that an infant is liable for money paid at his request for necessaries for him; and if he give a note for necessaries with a surety who pays it, the surety may recover against the infant.

If an infant avoid a contract, he can take no benefit from it; thus, if he contracts to sell, and refuses to deliver, he cannot demand the price; or if he contracts to buy, and refuses the price, he cannot demand the thing sold.

An infant is as liable for torts (by torts or tortious acts the law means *wrongs* or offences) as an adult; and therefore, if he fraudulently represented himself as of age, when he was not, and so made a contract which he afterwards sought to avoid, this fraud will not prevent his avoiding the contract, but for the fraud itself he is answerable just as an adult would be. So if he disaffirms a sale, for which he has received the money, he must return the money; because keeping it would be a *wrong*, or a confirmation of the sale. So if after his majority he destroys or puts out of his hands a thing bought while an infant, he cannot now demand his money back, as he might have done on tendering the thing bought; for by his disposal of it he has acted as owner, and confirmed the sale.

In general, if an infant avoids a contract on which he has advanced money, and it appears that he has received from the other party an adequate consideration for the money so advanced, which he cannot, or will not restore, he cannot recover back the money which he advanced. But if an infant has engaged to labor for a certain period, and, after some part of the work is performed, rescinds the contract, he can recover for the work he has done, as much as that work was worth.

The contract of an infant is voidable only by him, or by those having a right to act for him, and not by the other party. The election to avoid or confirm belongs to the infant alone; and his having this right does not affect the obligation of the other party. Therefore, one who gives a note to an infant, or makes any other mercantile contract with him, must abide by it, unless the infant annuls it, which he can do if he chooses to.

But if the note were given or the contract made by a fraud on the part of the infant, the injured party has the same right of defending against it on this ground as if the fraudulent party were not an infant. And it is a universal rule of the law, that no contract which is tainted with fraud is valid against an innocent party; therefore, a wilfully false representation of the infant that he has reached his majority would be a fraud, and would enable the party dealing with him to set the contract aside.

A father is bound to supply an infant child with necessaries; and, if he does not, is liable for their value to any person who supplies them. And for these, as we have seen, the child himself is also liable.

Although in most of our States the law does not require that the confirmation or new promise of an adult, of a promise which he may avoid because it was made by him when an infant, must be in writing, it would always and everywhere be better and safer to have this new promise in writing. It should be in substantially this form :

(1.)

I, Henry Thompson, having promised Nathan Green, to (*here describe the promise, whether by a note, or verbally, for goods bought, or the like, briefly, but so that there may be no mistake about it*) and at the time of making that promise I was a minor, within the age of twenty-one years, now, in consideration of said promise, I do hereby confirm and acknowledge the same, and promise a full performance and execution thereof. HENRY THOMPSON.

It would often be easier, if both parties assented, simply to give a new note for the amount due. But it might, in many cases, be better that the new promise should tell the story of the old promise for which it is given.

CHAPTER IV.

APPRENTICES.

THE contract of apprenticeship is generally in writing, and is also most frequently by deed, (or writing under seal,) and is to be construed and enforced as to all the parties by the common principles of the law of contracts. Usually, the apprentice, who is himself a minor, and his father or guardian with him, covenant that he shall serve his master faithfully during the term. And the master covenants that he will teach the apprentice his trade; but the instrument is not made invalid by the omission to specify any trade or profession as that to be taught. He also covenants to supply him with all necessaries, and at the end of the term, give him money or clothes. Slight informalities would not make the instrument void. Even if they are of sufficient magnitude to have this effect, the instrument will prescribe and measure the claim of each of the parties against the other, if they have lived under this instrument as master and servant. But the apprentice's consent will not be inferred from his mere signature, but must be expressed.

In case of sickness the master is bound to provide proper medicines and attendance. The master cannot transfer his trust, or his rights over the apprentice. He has no right to employ the apprentice in menial services not connected with the trade or business which he has agreed to teach him. And when he neglects to take due charge of the apprentice, the parent's or guardian's authority will revive.

The sickness of the apprentice, or his inability to learn or to serve, without his fault, does not discharge the master from his covenants, because he takes this liability on himself. Nor will such misconduct as would authorize a master to discharge a common servant, release the master of an apprentice from his liability on his contract. But if the apprentice deserts from his service, and contracts a new relation which disables him from returning lawfully to his master, the latter is not bound to receive him again if he offers to return.

Not only a party who seduces an apprentice from his service is liable, but where one employs an apprentice without the knowledge and consent of his master, the employer is liable to the master for the services of the apprentice, although he did not know the fact of the apprenticeship. It may be added that if an action be brought for harboring an apprentice against the will or without the consent of his master, the plaintiff is bound to prove that the defendant had a knowledge of the apprenticeship. But a defendant who did not know the apprenticeship when he hired or received the apprentice, and who being informed thereof continued to retain and harbor him, thereby makes himself liable.

(2.)

A General Indenture of Apprenticeship, as sometimes used in New England.

This Indenture, Made the day of by and between A. B of and C D. his son, of the age of years, of the one part, and R. J. of of the other part, witnesseth, that the said C. D., by and with the consent of the said A. B. (testified by his signing and sealing these presents) hath bound out himself as an apprentice, to or to be taught in the said trade, science or occupation of a which the said R. J. now uses, and to live with, continue, and serve him as an apprentice from the day of the date hereof (or from the day of next coming) unto the full end and term of seven years from thence next ensuing and fully to be complete and ended. During all which said term of seven years, the said A. B. doth covenant and promise to and with the said R. J. that he, the said C. D., shall and will well and faithfully serve and demean himself, and be just and true to him the said R. J. as his master, and keep his secrets, and everywhere willingly obey all his lawful commands; that he shall do no hurt or damage to his said master in his goods, estate, or otherwise, nor willingly suffer any to be done by others, and whether prevented or not, shall forthwith give notice thereof to his said master; that he shall not embezzle or waste the goods of his said master, nor lend them without his consent to any person or persons whatsoever; that he shall not traffic, or buy and sell, with his own goods, or the goods of others, during the said term, without his master's leave; that he shall not play at cards, dice, or any other unlawful games, whereby his said master may sustain any loss or damage, without his consent; that he shall not haunt or frequent play-houses, taverns or ale-houses, except it be about his master's business there to be done; and that he shall not at any time, by day or night, depart or absent himself from the service of his said master without his leave; but in all things, as a good and faithful apprentice, shall and will demean and behave himself to his said master, and all his, during the said term. And for and in consideration of the sum of to him in hand paid, etc., the receipt, etc., the said R. J. doth covenant, promise, and agree to teach and instruct his said apprentice, or otherwise cause him to be well and sufficiently taught and instructed, in the said trade of a after the best way and manner that he can; and shall and will also find and allow unto his said apprentice meat, drink, washing, lodging, and apparel, both linen and woolen, and all other necessaries in sickness and in health, meet and convenient for such an apprentice, during the term aforesaid; and at the expiration of the said term, shall and will give to his said apprentice (over and above his then clothing) one new suit of apparel, viz., coat, waistcoat, and breeches, hat, shoes, and stockings, and linen, fit and suitable for such an apprentice.

In Witness Whereof, The said parties have interchangeably set their hands and seals hereunto. Dated the day of in the year of our Lord one thousand nine hundred and

(Signatures.) *(Seals.)*

(Witnesses.)

(3.)

Shorter Indenture of Apprenticeship.

This Indenture Witnesseth, That by and with the consent of hath put himself, and by these presents doth voluntarily, and of his own free will and accord, put himself Apprentice to to learn the art, trade, and mystery of and after the manner of an Apprentice to serve the said for and during, and to the full end and term of next ensuing. During all which time the said Apprentice doth covenant and promise, that he will serve his master faithfully, keep his secrets, and obey his lawful command; that he will do him no damage himself, nor see it done by others, without giving him notice thereof—that he will not waste his goods, nor lend them unlawfully—that he will not contract matrimony within the said term—that he will not play at cards, dice, or any other unlawful game, whereby his master may be injured—that he will neither buy nor sell, with his own goods or the goods of others, without license from his master—and that he will not absent himself day nor night from his master's service, without his leave—nor haunt ale-houses, taverns or play-houses, but in all things behave himself as a faithful Apprentice ought to do during the said term. And the said master on his part doth covenant and promise, that he will use the utmost of his endeavors to teach, or cause to be taught or instructed, the said Apprentice in the art, trade, or mystery of and will procure and provide for him sufficient meat, drink, clothing, lodging, and washing, fitting for an Apprentice, during the said term, and will give him quarters schooling during the said term.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other, firmly by these presents,

In Witness Whereof, The said parties have interchangeably set their hands and seals hereunto. Dated the day of in the year of our Lord one thousand nine hundred and

Executed and delivered before

(*Witnesses.*) (*Signatures.*) (*Seals.*)

CHAPTER V.

MARRIED WOMEN.

By the original common law of this country, a married woman is wholly incapable of entering into mercantile contracts on her own account. By the fact of marriage, her husband becomes possessed of all her real estate during her life, and if a living child be born of the marriage, he has her real estate during his own life, if he survive her. This life-right in her real estate is called, in law, his *tenancy by the curtesy*.

All the personal property which she has in actual possessic becomes by common law, absolutely his, as entirely as if she had made a transfer of it to him. But by property in possession the law means only her goods and chattels; or things which can be handled; and which actually are in her hands, or under her direct and immediate control. If she have notes of hand, money due her, or shares in various stocks, these are not considered as things in possession, but as things in action.

Things in possession are those things which one has now in his hands, and *things in action* (called in law *choses in action*), those which are so called because he who owns them cannot get possession of them without an action, if other persons choose to resist him. All debts, and evidences of debt, as bonds, notes, and all shares in stocks, whether national or State, or of incorporated companies or other companies, are things in action. But bank-bills are usually regarded as money, and therefore as things in possession. The common law makes a wide difference between things in possession and things in action in many respects.

The common law of husband and wife as to *things in action* is this. The husband may, if he pleases, reduce them to his possession, and so make them absolutely his own. In general, he does this by any act which is distinctly an act of ownership; as if he demands and collects the debts due to her, or indorses her notes—which he can do in his own name—and sells them, or has the stock transferred to his own name, or, in general makes any final and effectual disposition of these *things in action.* Then they have become absolutely his own.

If, however, he does not reduce them to possession, and dies, and she survives him, her whole right and property revive at his death, without any interest whatever in his representatives. And even if he disposes of them by will, this is ineffectual, unless he had reduced them into his possession while he lived.

If, however, he survives her, he will be made, if he wishes it, her administrator, and then can collect all her *things in action*, and hold them or their proceeds as his own. And if she dies, and then he dies before he has collected these *things in action*, administration on his wife's effects will be granted to *his* next of kin, and not to *hers;* and when collected, they will belong to his estate.

On the other hand, the husband is liable, by the common law, with her, for all the debts for which his wife was liable when he married her. This is true whether they were then payable, or did not mature until after the marriage; and whether he received anything with her or not. If he does not pay them, and dies before the creditor has obtained a judgment against him, his estate is not liable, even if he had a fortune with her, and that fortune goes to his heirs or his creditors, and her creditors get nothing. So it is if the wife dies before the creditor recovers a judgment against the husband, and the husband then retains all her fortune. But her responsibility revives at his death, and she is liable as before marriage, even if she carried him a fortune, and all her fortune went, as above stated, to his representatives. But if she dies, leaving *things in action* not reduced by the husband to possession, and he reduces them to his possession as her administrator, he must apply them to the payment of her debts, and can hold for himself only what is left after such payment.

Such, we have said, is the common law of England and of this country. We have stated it, because it is the origin and common foundation of the law everywhere. But it is not just or right; and there are few, perhaps no one of our States, in which it remains wholly unqualified by statutory provisions. But these provisions are very various; and in some of the States they change with almost every year.

By the common law a widow is entitled to dower, that is, to the use and occupation during her life of one-third of the lands owned by the husband at any time during the existence of the marriage relation between them.

In nearly all the States a married woman conveys her own real estate, and releases dower by joining in a deed with her husband; but she is not generally bound by covenants therein, and, in many, must be separately examined. In most, she has a certain time, after removal of the disability of coverture, to assert her different rights, otherwise barred. Generally, devises or conveyances to husband and wife create a joint-tenancy, unless the terms of the devise or conveyance are expressly otherwise. And, upon the marriage of a woman who is plaintiff or defendant, the suit does not abate, but the husband may be admitted to prosecute or defend with her.

I give here an Abstract of the law of husband and wife, as it stands in the Statutes of the several States and Territories.

For statute provisions respecting homesteads, see the Abstract of Laws relating to the Collection of Debts.

ALABAMA.

All property of wife acquired before or after marriage is her separate property and not liable for debts of husband. Her earnings and any damages recovered for injury to person or property are her separate estate. She remains solely liable for torts committed before marriage. Husband is not liable for wife's contracts after marriage, or for her torts, unless he participates. She has full capacity to contract as if sole. She must sue and be sued alone on all her contracts and torts. Husband must join in sale of her lands, unless he has abandoned her, is insane, a non-resident, or imprisoned under two years' sentence. She cannot become surety for her husband. Husband and wife may contract directly with each other, subject to rules of law as to persons in confidential relations. She may carry on business in her own name on filing in the probate court written consent of her husband. A widow having no separate estate is entitled to dower of one-third of husband's lands if issue or estate insolvent, and if no issue and estate is solvent, one-half. If she has a separate estate equal to the interest she would otherwise take as dower, she shall not be entitled to such interest, or if her separate estate is less than such interest, she shall be entitled to enough to equalize her separate and such interest. Married women over eighteen have the same rights as though of full age.

ARIZONA.

All property of the wife owned by her before marriage, or afterwards acquired by gift, devise, bequest, or descent, is her separate property, and is not liable for debts of the husband. All property acquired by either husband or wife after marriage, except by gift, devise, bequest, or descent, is the common property of both, and during coverture can be disposed of by him only, but she must join in all deeds and mortgages of real estate. She may sue and be sued, in reference to her separate property, as though unmarried, and may carry on business in her own name by complying with certain statutory provisions. If of the age of twenty-one years or over, she shall have the sole and exclusive control of her separate property, and may sell and convey her lands without being joined by the husband. Dower and curtesy are abolished.

ARKANSAS.

In ARKANSAS, a married woman may be seized in her own right of any property not coming from her husband. She cannot be executrix. Her real and personal property are her sole property, and are not liable for her husband's debts, but may be controlled by her, and she may sue or be sued on account thereof, as if unmarried. The filing of a schedule of such separate property in the office of the recorder of the county where she lives is *prima facie* evidence of her title. May make a will; may insure her husband's life for her own benefit; may manage and carry on business with her separate estate; and her contracts in respect thereto are not binding on her husband. A widow is entitled to dower of one-third of all lands in which the husband had an estate of inheritance during marriage, not released by her, and one-third of the personal property. If no children, she takes one-half of each as against the heirs and against creditors one-third, if the estate is newly acquired, but if it is ancestral, she will take only a life interest in one-third of the real property.

CALIFORNIA.

A married woman may hold, convey, and devise real and personal estate. Either husband or wife may enter into any engagement or transaction with each other or with any other person respecting property, which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations to each other. They cannot by contract with each other alter their legal relations except as to property and except that they may agree to an immediate separation and make provision for their support and that of children during separation. All property owned before marriage, or subsequently acquired by gift, bequest, devise, or descent, by either husband or wife, with the rents, issues, and profits thereof, is his or her separate property. All other property acquired after marriage by either husband or wife, or both, is community property. The wife may, without the consent of her husband, convey her separate property or dispose of the same by will. Neither the separate property nor the earnings of the wife are liable for the debts of the husband, but her separate property is liable for her own debts contracted before or after marriage. The separate property of the husband is not liable for the debts of the wife contracted before marriage. The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband, are her separate property. The husband has the management and control of the community property, except the homestead, with the like absolute power of disposition (other than testamentary) as he has of his separate estate. Husband cannot convey community property without consideration unless wife joins in conveyance, and it is the safer course to have the wife join the husband in all conveyances. Such is the common practice. Husband can convey property directly to the wife. The community property is not liable for the contracts of the wife made after marriage unless secured by pledge or mortgage thereof executed by the husband. Dower and curtesy are abolished. On the death of the wife the entire community property, without administration, belongs to the surviving husband except such portion as may have been set apart to her by judicial decree for her support. On the death of the husband one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his descendants, or if there be no descendants is divided in the same manner as the separate property of the husband, the whole community property being subject to his debts, the family allowance, and charges and expenses of administration. Contracts for marriage settlements must be in writing, executed and acknowledged in like manner as deeds of land, and recorded in every county in which there is land affected thereby. In case of divorce on the ground of adultery or extreme cruelty the community property (except the homestead) is divided in such manner as the court may deem just. In other cases it is equally divided. A married woman may, upon obtaining leave of court, transact business as a *feme sole*. Women arrive at majority at the age of eighteen years.

COLORADO.

All property coming to the wife before or after marriage, except from her husband, remains her sole and separate property. She may bargain and sell, and enter into any contract in regard to the same as if she were sole. She may sue or be sued in regard to her property, person, or reputation, the same as if sole; may make a will, but she cannot bequeath away from her husband more than one-half her property without his consent in writing. She may carry on business on her own account, and her earnings are her separate property. The husband is liable for the debts of his wife contracted before marriage to the extent of the property he may receive through her, but no further; and the wife may contract debts, sign bonds, bills, and notes, and sue and be sued in regard to the same as if she were sole. Dower is abolished. For educational and family expenses husband and wife are jointly and severally liable.

CONNECTICUT.

Husband married before April 20, 1877, has a right to use of wife's real estate during her life and an estate by the curtesy after her death. All real estate conveyed to a married woman, in consideration of property acquired by her personal services during coverture, shall be held by her to her sole and separate use; and the avails of all sales of the real estate of a married woman, if invested in her name, or in the name of a trustee for her, belong to her. When any man abandons his wife for a continuous period of three years she may, on petition to the Superior Court, be authorized to dispose of her real estate, as if she were a *feme sole*. All the personal property of any woman married since the 22d of June, 1849, and before April 20, 1877, and all the personal property acquired thereafter by a married woman, and the avails of any such property if sold, shall vest in the husband in trust, to receive and enjoy the income thereof during his life, subject to the duty of expending therefrom so much as may be necessary for the support of his wife during her life, and of her children during their minority, and to apply such part of the principal thereof as may be necessary for the support of the wife, or otherwise, with her written assent; and upon his decease the remainder of such trust property shall be transferred to the wife, if living, otherwise as she may by will have directed, or in default of such will to those entitled by law to succeed her intestate estate. A marriage contracted after April 20, 1877, gives neither husband nor wife any interest in the property of the other, except as survivor. Her earnings are her own property. She may contract with third persons or convey property to them as if unmarried. The property of either is not liable for the debts of the other incurred before or after marriage. The purchases of either are presumed to be on his or her own account, unless they have gone to the support of the family, or for her reasonable apparel, or for her support when abandoned by her husband, in which cases he is liable. He is bound to support the family. On the death of either, the survivor has the use for life of one-third of the property, real and personal, of the other, which right is not to be defeated by any will of the other. If there be no will the survivor takes the third absolutely, and if no issue one-half. If either leaves a legacy to the other that legacy is to be taken instead of this right; but the legatee may elect whether to accept the legacy or his or her statutory share. They may contract before or after marriage for a provision in lieu of this statutory share. Neither party abandoning the other is entitled to this share. Parties married before April 20, 1877, may by written contract duly recorded substitute for their rights as existing at that date those given to parties thereafter married as above provided. A married woman whose husband is under a conservator has all the rights as to her property and estate as though unmarried. Married woman may act as executrix, administrator, trustee, or guardian.

DELAWARE.

The real and personal property of any married woman, whether acquired before or after marriage from any person but her husband, is her sole and separate property, not subject to the disposal of her husband or liable for his debts. She may receive and control her separate earnings, and may sue and be sued in regard to her separate property. She may also make any contracts necessary to be made with respect to her property. In purchasing real estate she may give any bond, mortgage, or security, as if sole, and her husband need not join. She may be executrix or administratrix. She may make a power of attorney. If twenty-one years of age she may dispose of her property, real and personal, by will. A widow is entitled to dower, as at common law, but if the husband die without leaving issue she is entitled to one-half, instead of one-third, of the real estate. Females attain their majority at 21 years. Guardianship continues until the female is 21 or is married.

DISTRICT OF COLUMBIA.

Property, real or personal, belonging to a married woman at the time of her marriage, or afterwards acquired, including her earnings, is her separate property, is not subject to disposal by the husband, or liable for his debts, and may be conveyed, devised, or bequeathed by her, as though she were unmarried, but no conveyance of her property shall be valid unless she is twenty-one years of age. A married woman may contract, sue, and be sued in her own name in all matters relating to her sole and separate property. She may make a will at the age of eighteen.

FLORIDA.

All property, real and personal, of the wife owned by her before marriage, or acquired afterwards by gift, devise, bequest, descent, or purchase, shall be her separate property, and not liable for the debts of the husband without her consent in writing executed according to the law governing conveyances by married women. Property of married women may be charged in equity and sold for her debts in certain cases. The wife's property remains in the care and management of the husband, but he cannot charge for such care, nor can she sue him for the rents and profits thereof. Her earnings are her own separate property. Husband and wife must join in any conveyance of her property, and in case of conveyance of real estate she must make a separate acknowledgment apart from her husband. The wife's deed, notwithstanding her minority, is valid if her husband joins with her. A married woman cannot make a contract to bind her separate property unless her husband joins with her; but on petition in chancery she may, by license of court, become a free dealer, and manage and control her own estate, and contract and sue in reference to the same, as though unmarried. Dower as at common law; but the widow may elect, instead of dower, to take a child's share in the estate of her husband, subject to the payment of his debts. A married woman may dispose of her property, real and personal, by will as though unmarried. Suits by married women must be begun as at common law; husband must join or she must sue by her next friend, except in suits relating to her real estate.

GEORGIA.

All property of the wife at the time of her marriage, and all acquired by her during coverture is her separate property, and is not liable for the debts, defaults, or contracts of her husband. She may contract, sue, and be sued in her own name as though unmarried, in all matters relating to her separate estate. She cannot bind her separate estate by any contract of suretyship for her husband or any assumption of his debts, and cannot sell to her husband except by order of court. The husband is bound to support the wife, and she is presumed to be his agent in all purchases of necessaries suitable to her station in life. The wife's separate property is not liable for debts contracted by her as agent for the husband in the purchase of necessaries for herself and children, but is liable for debts contracted by her individually for such support. A woman may contract marriage or make a will at fourteen; for other purposes she becomes of age at twenty-one. Dower is allowed only in lands which husband owned at his decease, or to which he obtained title in right of his wife. She may elect to take a child's portion in lieu of dower.

IDAHO.

All property, real and personal, owned by the husband and wife respectively before the marriage, and that subsequently acquired by gift, bequest, devise, or descent, or that acquired with proceeds of separate property, is separate property. The wife mav sign, acknowledge, and have recorded a complete inventory of her separate personal property in the county where the parties reside, which is prima facie evidence of her title. She has the full management, control, and power to dispose of her separate property and may enter into a contract in reference to it, in the same manner and with like effect as a married man, and may sue or be sued in the same manner as if single. Her separate property is not liable for her husband's debts. All other property acquired by either party after marriage is common property. The husband has the entire management and control of the common property, except the homestead, with the same power of disposition as of his own separate estate. The rents and profits of all separate property of both husband and wife are deemed common property, unless it is otherwise provided in the instrument of devise. On the dissolution of the community by the death of the husband, half of the common property goes to the widow, and half to descendants, if any; if not, all to the widow. On the death of the wife, the entire common property goes to the husband. On dissolution by decree of court, the common property is equally divided, unless, in case of adultery or extreme cruelty, the court otherwise orders. She may dispose of all her separate property, real and personal, by will. Curtesy and dower are abolished.

ILLINOIS.

In ILLINOIS, a married woman may own, in her own right, real and personal property obtained by descent, gift, or purchase, and manage, sell, and convey the same to the same extent and in the same manner that the husband can property belonging to him. Neither husband nor wife shall be liable for the debts of the other contracted before marriage, nor for the separate debts of each other. Contracts may be made and liabilities incurred by a wife, and the same enforced against her, to the same extent and in the same manner as if she were unmarried; but she cannot enter into or carry on a partnership without the consent of her husband, unless he has abandoned her, or is idiotic or insane, or in the penitentiary. She may sue and be sued alone, as if she were unmarried. Neither he nor she can recover any compensation for any labor performed or services rendered for the other. Provisions are made for the protection and support of the wife in case of her abandonment by the husband. By another act, tenancy by the curtesy is abolished, and husband and wife are put on the same footing as to dower. Married woman may sue alone in regard to her separate property, and when the suit is between husband and wife; may be executrix if her husband file his consent. She may make a will. She attains majority at eighteen.

INDIANA.

In INDIANA, a married woman holds her real and personal property and all the income therefrom absolutely as her separate property, free from liability for the debts of the husband, but she cannot sell or encumber her real estate unless the husband join in the conveyance. She may dispose of her separate personal property as if unmarried; may carry on any trade or business, and her earnings and profits therein are her separate property; and may enter into any contract in reference to her separate personal estate or business, or the management and improvement of her separate real estate, and may sue or be sued thereon. The husband is not liable for debts contracted in her separate business. Curtesy and dower are abolished. As against creditors, widow takes five hundred dollars in goods or money and one-third of real estate in fee if it does not exceed ten thousand dollars, one-fourth if it does not exceed twenty thousand, and one-fifth if it exceeds that amount. As against relatives, she takes five hundred dollars in goods or money, and one-third of real and personal property if two or more children survive; one-half if one child survive. If no children, but one of husband's parents survives, she takes the whole estate if under one thousand dollars, otherwise three-fourths. If neither children nor husband's parents survive she takes the whole. There are special provisions regarding second marriages. Married woman may make a will, and is eligible for certain public offices. A woman attains majority at twenty-one but may marry at sixteen.

IOWA.

In IOWA, a married woman owns in her own right all property, real or personal, which came to her by descent, gift, or purchase, and may manage, dispose of, and devise the same by will without the interference of her husband. Neither the husband nor wife is liable for the debts or contracts of the other, made or incurred before marriage or after. For all civil injuries by the wife, damages may be recovered from her alone. In case of abandonment of either by the other, the party abandoned may petition the court, who may, on sufficient proof of the facts, authorize the petitioner to manage or encumber the property of the abandoning party for the support of the family. Each may constitute the other his or her attorney in fact. She may sue for and recover wages for her personal services, and hold what she recovers as her own property. She may make contracts and incur liabilities in the same manner as if unmarried. The husband is not liable upon contracts relative to his wife's separate property or purporting to bind herself alone, nor is the property or income of either liable for the debts of the other. Family expenses, education of children, etc., are chargeable upon the property of both or either, and on such claims they may be sued jointly or separately. If both are sued jointly the wife may defend for her own right or for her husband's also. Neither husband nor wife can remove the other or their children from the homestead without his or her consent. A married woman may receive gifts or grants directly from her husband. Dower and curtesy are abolished. The survivor, whether husband or wife, has one-third in value of all real estate owned by the other at any time during the marriage unless the right has been relinquished by a joint deed or the property sold on execution. She attains majority at eighteen or on marriage.

KANSAS.

In Kansas, the property, real or personal, of a married woman, owned at the time of her marriage, or subsequently received, is her sole and separate property, not subject to the disposal of her husband, nor liable for his debts. She may sell and convey or enter into any contract relating thereuntto, and may sue and be sued in the same manner and with like effect as a married man. She cannot bequeath more than half of her property away from her husband without his written consent. If either die intestate and without issue, all his or her property goes to the survivor. If a husband deprive his wife by will of more than half his property, she may elect to accept the conditions of his will, or take half of his property. Dower and curtesy are abolished. She may carry on trade, and her earnings are her separate property. She attains majority at 18.

KENTUCKY.

Marriage gives the husband no interest in the wife's property, real or personal, during her life. During the existence of the marriage relation she holds all her property for her separate and exclusive use, free from any debts, liability, or control of her husband. Her estate is not liable upon a contract after marriage to answer for the debts or defaults of another, including her husband, unless such contract be in writing in the nature of a mortgage, but is liable for her own debts. She may acquire and hold property, real or personal, and may dispose of her personal property in her own name, as though unmarried. She may make contracts and sue and be sued as a single woman — except that she cannot make an executory contract to convey real estate unless her husband join. She may rent out her real estate and receive and recover the rents in her own name. A gift or transfer of personal property between husband and wife must be recorded like a chattel mortgage. Husband and wife may sell and convey her land and chattels real. If he abandon her without making sufficient provision for her support, or if he become insane, or be imprisoned for more than one year, she may be empowered to sell and convey her real estate freed from any claim by him.

On the death of either husband or wife the survivor has a life estate in one-third of any real estate held by the other during coverture, unless the right has been barred or released, and an absolute estate in one-half of the personal property left by the deceased, after payment of debts. A married woman, twenty-one years of age, may dispose of her estate by will, subject to the rights of her husband as above stated.

LOUISIANA.

In LOUISIANA, the wife cannot appear in court without the authority of her husband, though she may be a public merchant, or hold her property separate from him. Even then, she cannot alienate, mortgage, or acquire by gratuitous or unencumbered title without his written consent. She may be authorized by the judge of probate upon his refusal, and, if separated from bed and board, has no need of the authorization of her husband. If a public merchant, she may, without being empowered by him, obligate herself in anything relating to her trade; her husband is also bound, if there is a community of property. She is considered a public merchant if she carries on a separate trade, but not if she retails only the merchandise of the commerce carried on by him. If the husband is under interdiction, or absent, the judge may authorize her to act as if unmarried. She may make a will without his authority. But she cannot become an executrix without his consent or the court's. She may act as a mandatory. Neither party can be a witness for or against the other. They may, by marriage contract, determine the rights of property, but cannot change the legal order of descents, nor derogate from the husband's rights over the person of his wife and children, or as head of the family, nor with respect to children if he survive the wife, nor from the prohibitory dispensations of the Code. The property of married persons is divided into "separate" and "common"; and the separate property of the wife into "dotal" and "extra-dotal," or "paraphernal." The "dotal" is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Full provisions exist as to the settlement, administration, recovery, subject-matter, etc., of dowry, and the rights of both parties therein, and as to the administration, fruits, etc., of the extra-dotal effects. The wife has a legal mortgage on her husband's immovables, for the restitution of her dower, which he may release by giving a special mortgage to the satisfaction of a family meeting, etc., or in accordance with stipulations in the marriage contract; but it shall not be lawful to stipulate that no mortgage shall exist. This mortgage must be recorded to avail against third persons. A partnership, or community, of acquests or gains exists by operation of law in all cases. But the parties may modify or limit it, or agree that it shall not exist; in which case there are provisions preserving to the wife the administration and enjoyment of her property, and the power of alienating it as if paraphernal, with reference to the expenses of the marriage and liability of the husband. This community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during marriage, either by donations made jointly to them both, or by purchase, or in any similar way, even though the purchase be in the name of one, and not of both. Debts contracted during marriage enter into this partnership, and must be acquitted out of the common fund; but those contracted before marriage, out of individual effects. The husband is the head and master of the community, administers its effects, disposes of the revenue, and may alienate by an unencumbered title, without the wife's consent. There are special provisions as to conveyances and dispositions of the community property and gains; effect of dissolution of marriage; ability of the wife to exonerate herself from debts contracted during marriage by renouncing the partnership; effect of such renunciation; death; survivorship; separation *a mensa et thoro;* separation of property during coverture; rights of creditors, etc. Either party, by marriage contract or during marriage, may give to the other all he or she might give to a stranger. Property acquired in the State by non-resident married persons, whether the title is in the name of either or in their joint names, is subject to the same provisions as if owned by citizens of the State. If husband or wife die intestate, without ascendants or descendants, his or her share in the community property is held by the survivor in usufruct for life; if the deceased intestate leave issue of the marriage, the survivor holds such issue's inheritance in usufruct till death or second marriage. Wife may petition for separation of property when her husband's affairs are in such a state that her interests are in danger. She may keep a bank account as though unmarried.

MAINE.

In MAINE, a married woman holds as her separate property whatever she possessed before marriage, and whatever comes to her after marriage, unless purchased by the husband's money or coming from him so as to defraud his creditors, and has all the usual rights of a single woman as to it, but cannot convey property received through the husband or his relatives unless he join. Her property alone is liable for her debts before marriage. Real estate may be conveyed to a wife by her husband as security for a *bona fide* debt, and this may be conveyed by her without his being joined in the deed. Letters of administration may be granted on her estate, and all debts contracted for her benefit shall be paid by her executor and allowed him. She may engage in trade on her own account, and any contract made by her is valid, and her property is liable to execution for her debts; his property is exempt in any such case unless he were a party to the contract. Her husband is not liable for her torts. If he abandon her and leave the state without providing for her maintenance, or be confined in the state prison, she may be authorized by the court to make contracts binding on him as well as herself. Dower and curtesy are abolished. Survivor is entitled to one-third of real estate except wild lands, if there are children — to one-half if none — and the same as to lands owned during coverture unless right has been released. Personal property aside from allowances to widow passes to the survivor in the same proportions. A woman over eighteen may marry without consent of parent or guardian.

MARYLAND.

In MARYLAND, the property of a married woman, real and personal, whether acquired before marriage or after, is her separate property, and not liable for the debts of the husband; but no conveyance made to her by her husband in fraud of creditors is valid. Her personal earnings and the income thereof belong to her. She may engage in any business, may form a partnership with her husband or other person, make contracts, and sue and be sued in all matters relating to her business or property as though unmarried. She may dispose of her property, real and personal, by deed, mortgage, lease, will, or other instrument, but if under eighteen her husband must join. She may release dower by a separate deed, or jointly with her husband. She may insure her husband's life and on his death may receive the amount of insurance free from any claim of his legal representatives or creditors. The husband is not liable for the wife's debts contracted before marriage. By act of 1904 the husband, on the death of the wife, is entitled to an estate similar to dower.

MASSACHUSETTS.

The real and personal property of a woman on her marriage remains her separate property; and a married woman may receive, receipt for, hold, manage, and dispose of property, real and personal, as if she were sole, except that unless the husband joins in her deed, his statutory rights in her estate in case of her death, or curtesy, will subsist. She may make contracts as though she were sole, except with her husband. In the absence of express agreement, all work or labor performed by her is presumed to be on her separate account. Husband and wife cannot transfer property to one another, except that the wife may acquire by a gift from her husband as her separate property articles of personal use and adornment to a value of not more than two thousand dollars, provided such gift be not made in fraud of creditors. A married woman may be an executrix, administratrix, guardian, or trustee. She may sue and be sued as though sole. When a married woman proposes to do business on her separate account, she shall record in the clerk's office of the town or city in which such business is to be carried on a certificate setting forth her name and that of her husband, the nature of the business and the place where it is to be carried on. When the nature of the business or place of carrying it on is changed, a new certificate shall be filed. If she fails to record such certificates her husband may do so. If such certificates be not recorded the property employed in the business is liable to be attached as the property of the husband, and the husband is liable for contracts made in carrying on the business. With these exceptions, the husband is not liable for contracts made by the wife in reference to her separate property or business, nor is her property liable to be taken on execution against him.

The rights of husband and wife in each other's property on the decease of either are now by statute substantially the same. Widow may have dower as at common law and husband may have curtesy consisting of the income of one-third of the wife's real estate for life whether issue be born or not. Dower or curtesy must be claimed within one year, and if claimed excludes all other claims to the real estate of the deceased. In the case of intestacy, if dower or curtesy be not claimed the survivor takes one-third of the real estate of the deceased in fee if there be issue surviving, if none, then one-half; if no kindred, the whole. Survivor is entitled to one-third of the personal property of the deceased absolutely if there be surviving issue; if no issue, to $5,000 and one-half of the excess; if no kindred, to the whole. If the personal property be less than $5,000 enough real estate may be taken to make up the deficiency and the remainder of the real estate only divided as above.

A married woman may make a will as though sole, but the husband may within one year waive the provisions of the will in his favor and take the same share in her estate as though she had died intestate, except that if he would thus take more than $10,000 he will receive only the income of the excess above that amount. The wife has the same rights in case the husband leaves a will; but by act of March 6, 1906, the probate court may, upon a petition in a proper case, decree that the husband has been deserted by the wife or is living apart for justifiable cause, and thereafter the wife shall not be entitled to waive the provision of a will made by him.

An estate of homestead cannot be released unless the wife joins.

MICHIGAN.

In MICHIGAN, all the real and personal estate of a married woman, whether acquired before marriage or after, is her separate property, free from liability for her husband's debts, and she may sell, convey, encumber, or otherwise dispose of the same as if sole, and she may bequeath the same by will. She may carry on business in her own name, and may make contracts binding her separate estate, but only in reference to her own property and business. She cannot bind her separate estate by becoming surety for her husband or other third person. She has the same right of dower as at common law, and may bar her right of dower by joining in her husband's deed. Tenancy by the curtesy is abolished. All contracts (except of marriage) may be made at twenty-one years. Marriage contracts can be made at sixteen.

MINNESOTA.

In Minnesota, all property, real or personal, owned by any married woman at her marriage, or received afterwards, is her own, as if unmarried, and is free from the control of her husband, and is not liable for his debts, but is liable for necessaries furnished to the family. She may make any contract she could make if unmarried, and any transfer of her property, except that the husband must join in the deed of her homestead, and unless he joins in her deed he will retain one-third interest under the statutory provision. Neither husband nor wife is liable for the debts or torts of the other, except that the husband is liable for necessaries furnished to the wife as at common law. Either may be the agent of the other, or contract with the other, except as to the sale of real estate from one to the other. In case of desertion or divorce, or when the husband has been for one year insane, the wife may convey her real estate as if sole, but in the latter case approval of husband's guardian, if any, is required. A woman attains her majority at eighteen, but may join her husband in deeds of conveyance though under age. Dower and curtesy are abolished. Surviving husband or wife is entitled to the homestead of the deceased for life, or in fee if there be no children, free from debts, and to one-third of the remaining real estate in fee, free from any testamentary or other disposition not assented to in writing by the survivor, but subject to debts.

MISSISSIPPI.

In Mississippi, married women may acquire, hold, sell, bequeath, and in all other respects deal with their property, and may make all kinds of contracts free from any of the common law disabilities. Gifts and conveyances between husband and wife must, however, be in writing, acknowledged and recorded. Curtesy and dower are abolished. The surviving wife or husband takes an equal share with the children severally, and, where there is no surviving issue, takes the whole property in fee.

MISSOURI.

The real estate of a married woman and the income therefrom are not subject to the husband's debts, nor can he dispose of such estate unless she join with him in conveying it. But the annual products of her real estate are liable for necessaries for the family and improvements on such estate. She may devise her real and personal estate, but not so as to affect his curtesy, and he cannot deprive her of her right to dower. All personal property acquired in any way by a married woman after March, 1875, is her separate property, free from her husband's debts, except for necessaries for herself and family. She may sue and be sued in reference to such property without joining her husband. She may make contracts in her own name which will bind her separate property, real and personal. Her separate property, left to her by will before or after marriage, is not liable for her husband's debts. Females are of full age at eighteen years.

MONTANA.

In **Montana**, the property of a married woman, whether acquired before or after marriage, and her earnings and accumulations are her separate property, and are not liable for debts of the husband except for necessaries for herself and children under eighteen years of age. A list of such property may be recorded with the county clerk and is *prima facie* evidence of her title. She may prosecute and defend suits, and may convey her separate property without consent of husband. Husband must support wife and family if able; if not, she must assist to the extent of her ability. Neither husband nor wife has any interest in the property of the other, and neither is answerable for the acts of the other. Either may enter into any transaction with the other or with any other person respecting property, as though unmarried. Widow has dower in one-third of all lands of which husband was seized during coverture. If he leave no issue she may elect in lieu of dower one-half of his real estate in fee, subject to payment of debts. Curtesy is abolished. A married woman may make a will, but cannot without husband's consent deprive him of more than two-thirds of her property, real and personal.

NEBRASKA.

In **Nebraska**, all the property, real or personal, of a married woman coming to her either before or after marriage, except by gift from her husband, and all the rents and profits thereof, are her sole and separate property, and may be managed by her alone, with interference by her husband, and they are not liable for his debts. She may convey or make any contract in reference to it that a married man may make as to his property; may sue and be sued, and carry on any business; and her earnings are her own. She may make a will; is not liable for her husband's debts; property of the husband is not liable for her debts. She must join with husband in conveyance or encumbrance of homestead. Women attain their majority at sixteen if married, otherwise at eighteen.

NEVADA.

In **Nevada**, all property of the wife, real or personal, held at marriage, or afterwards acquired by gift, bequest, devise, or descent, is her separate property; and all the husband's so held or acquired is his separate property. All property acquired otherwise by either party, after marriage, is common property. She may manage and dispose of her separate property without his consent. During the marriage the husband has the exclusive control and management of the common property, and may sell and dispose of the same as his own, but any conveyance or mortgage of homestead must be executed by both husband and wife. At her death, if he survive her, all of the common property goes to him. If she survive him, at his death, half of the common property goes to her; and in case of no testamentary disposition and no issue, she takes the whole. Dower and curtesy are abolished. The separate property of the wife is liable for her antenuptial debts, but his is not. Marriage contracts, duly executed and recorded, may vary these rights and interests. Married women may carry on and transact business under their own name, under certain regulations. Her earnings are not liable for her husband's debts; they may contract together; she may sue and be sued alone if living separate.

NEW HAMPSHIRE.

In New Hampshire, a married woman may hold real or personal estate, and convey, sell, devise, and bequeath the same as freely as if sole. She is entitled to the absolute control of her own earnings, and is not liable for the debts of the husband. She may make contracts in her own name, buy goods, give notes, and transact any business whatever, as if sole, and bind her own property, in the course of such business, for her own benefit, and without the intervention of the husband; but she is not liable as surety for her husband, or in any undertaking in his behalf. He is not liable for her debts contracted before marriage. In case of desertion, or when the husband is a spendthrift, insane, or under guardianship, the wife has all the rights of a *feme sole.* A married woman may make a will. Either may convey real estate directly to the other. Dower and curtesy as at common law.

NEW JERSEY.

Property owned by a woman at the time of her marriage, or afterwards acquired by gift, grant, descent, devise, or bequest, and the income therefrom, is her separate property, not subject to the disposal of her husband, or liable for his debts. She may bind herself by contract in the same manner as though unmarried, and may sue and be sued on such contracts without her husband, but she cannot be an accommodation endorser or a surety, nor is she liable, on any promise, to answer for the debt or default of any other person. She cannot convey or encumber real estate without her husband; but a married woman having power to convey as executrix, administratrix, trustee, or guardian, may make a valid deed without husband's signature. If she is living in state of separation under a decree or without a decree, if there is no issue, she may convey certain interests in certain lands. Her separate property is not liable for debts contracted for the support of herself or family as her husband's agent, nor is she liable for family expenses, except by express contract in her own name. When a man refuses or neglects to support his wife, and she lives separate from him, she may, by order of court, sell, mortgage, or lease her lands, and may sue her husband in all matters relating to her separate property, as though unmarried. A married woman may make a will, but cannot defeat her husband's rights in her real estate. Dower as at common law. Majority at twenty-one.

NEW MEXICO.

All property acquired in any manner by either husband or wife before or during marriage is his or her separate estate and liable for his or her separate contracts, debts, or torts. Neither is liable for the contracts or torts of the other except contracts for necessaries furnished the wife, husband, or family. All married persons have the same property rights, power to convey or contract, and to sue and be sued as unmarried persons, except that neither husband nor wife can convey or mortgage any real estate acquired during coverture by onerous title (i. e. not by gift, bequest, devise, or descent) unless both join in the execution of the instrument, or dispose by will of more than one-half of his or her property acquired during coverture by onerous title, and no contract between them affecting the property of either is valid unless in writing duly acknowledged and recorded. Except as above either may dispose of his or her property by will. On the death of either the survivor inherits one-half of that part of the deceased acquired during marriage by onerous title, and one-fourth of the remaining portion if not disposed of by will, or the whole if there be no surviving children. Females under eighteen cannot marry without consent of parent or guardian.

NEW YORK.

The real and personal property of any woman acquired before or after marriage remains her separate property, not liable for her husband's debts. Marriage contracts are allowed. She may carry on a trade or business on her separate account, may manage her property and business free from the control of her husband, and may dispose of her real or personal estate. Her bargains do not bind her husband. She may sue and be sued in regard to her person or separate property. By act of 1906 she may bring suit on torts without joining her husband. Transfers of real estate may be made *directly* between husband and wife and they may contract with one another. Her husband is liable for her antenuptial debts to the extent of the assets received from her. A policy of insurance on the life of any one in her favor may with consent of the insured be assigned. She may hold patents for her inventions, and may vote on stock held by her. She may be a guardian, executrix, or administratrix, and may give the necessary bonds. She may make a will of personal property at sixteen; of real property at twenty-one. She may make a power of attorney as if single. Age of consent to marriage is eighteen.

NORTH CAROLINA.

All the property, real and personal, of a married woman, whether acquired before or after marriage, is her separate property, and is not liable for the debts or obligations of her husband. Marriage settlements are invalid as against creditors existing at the time of the making the same. Her husband is not liable for her debts, contracts, or wrongs, made or commited before marriage. She cannot make contracts without her husband's written consent, except for necessary personal expenses, or for the support of the family, or in payment of antenuptial debts, unless she is a free-trader. A wife abandoned by her husband may contract and bind her separate estate. The savings from the income of the separate property of the wife belong to her. She may make a will, provided she do not deprive her husband of his curtesy, and may convey her property with his written consent. She may insure his life for her benefit, if the premium do not exceed three hundred dollars. Females are of age at twenty-one.

NORTH DAKOTA.

A married woman may own in her own right real and personal property, and manage, sell, convey, and devise the same as freely as though unmarried. She may make contracts and sue and be sued thereon. Neither husband nor wife has any interest in the property of the other, or is answerable for the other's acts. Husband and wife may make contracts with each other respecting property as though unmarried. The earnings or separate property of the wife are not liable for the debts of the husband. Women attain their majority at eighteen. Curtesy and dower are abolished.

OHIO.

All property, real or personal, belonging to a woman at her marriage, or afterwards acquired by conveyance, gift, devise, or inheritance, or by purchase with her separate money or means, or due as wages of her personal labor, or growing out of any violation of her personal rights, together with the income therefrom, is her separate property, is under her sole control, and not liable for any debts of her husband. She may sue and be sued in her own name, and may contract in the same manner and to the same extent as though unmarried. Husband and wife may contract with each other. A married woman whose husband deserts her, or neglects to provide for his family, may, in her own name, contract for the labor of herself and her minor children, and collect the earnings thereof, and may, by application to the court of common pleas, secure the care and control of minor children and the disposition of her real property. A married woman may make a will. Women attain their majority at the age of eighteen. The husband is not liable for the wife's contracts or torts. Curtesy is abolished, but the husband has a dower right in the wife's estate.

OKLAHOMA.

A married woman may own, manage, sell, convey, and devise property, real and personal, acquired by gift, descent, or purchase, and make contracts and incur liabilities, in the same manner as if unmarried. Neither husband or wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. Husband and wife may contract with each other, or with others, respecting property, subject as between themselves to the rules of law as to persons in confidential relations. Neither is answerable for the acts of the other. Earnings of wife and of minor children living with her while she is living separate from her husband are her separate property. The separate property of wife is not liable for debts of husband, but is liable for her own debts contracted before or after marriage, except for those contracted for the support of herself, her children, or family as her husband's agent. She may buy and sell goods, give notes or other obligations, and sue and be sued, as if unmarried. Woman attain their majority at eighteen.

OREGON.

The property of a married woman, whether acquired before marriage or after, is her separate property, and is not liable for the debts of the husband. She may manage, sell, convey, or devise the same by will, to the same extent and in the same manner that her husband can property belonging to him. Husband and wife may convey property to one another. Property of both is liable for expenses of family and education of children. Neither is liable for the contracts of the other. By special statute all civil disabilities which are not imposed upon the husband are removed from the wife, except the right to vote and hold office. Women attain their majority at eighteen, or on marriage. Dower as at common law.

PENNSYLVANIA.

The disabilities of married women as to acquisition, control, and disposition of property, and the right to make contracts have been substantially removed. Every married woman has the right to acquire, hold, control, and dispose of her property, real and personal, in the same manner as though unmarried, except that she cannot mortgage, lease, or convey real estate unless her husband joins in the conveyance. Her deed or lease must be separately acknowledged.

Property of every kind owned, acquired, or earned by her before or after marriage belongs to her and not to her husband or his creditors. She may make any contract relating to any business in which she may engage, or for necessaries, or in relation to her separate estate, and may sue or be sued thereon, or for torts done to or committed by her, in the same manner and with the same effect as though unmarried, and any recovery by or against her will affect only her separate estate, but she cannot become accommodation endorser, guarantor, or surety for another. She may make assignments, transfers, and sales of her separate personal property of every kind without her husband joining. She may dispose of her property, real and personal, by will signed by her as though unmarried. Widow takes for life one-third (or if no issue living, one-half) of all real estate owned by husband at his decrease and dower in all owned by him at any time during marriage, unless she has released it, or the land has been sold under execution. Husband has wife's lands for life whether there be issue or not.

RHODE ISLAND.

The property of a married woman, whether acquired before or after marriage, including that acquired by her own industry, together with the income from the same, is not liable for her husband's debts, and remains her sole and separate property and may be disposed of by her as though she was unmarried, subject, however, to his curtesy in her real estate. She may make contracts of all kinds as though unmarried. She may dispose of her property by will, but not so as to impair her husband's curtesy. Her separate property is not liable for the expenses of the family, or for the support of herself or children except by her written order; property held for her benefit under express trusts may be subject to her contracts by her express written order. Husband and wife may convey property to one another when not in fraud of creditors. A married woman coming from another State whose husband has never lived with her in the State, after a year's continuous residence may transact business, make contracts, dispose of property acquired by her, and have the custody of her minor children. A married or unmarried woman is of age at twenty-one.

SOUTH CAROLINA.

By the constitution of South Carolina, adopted in 1895, "the real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire by gift, grant, inheritance, devise, or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried man or woman is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried." She is not bound to support her family if her husband be alive, and her separate property is not bound by the contracts of her husband without her consent. Her earnings and income are a part of her separate estate. Tenancy by the curtesy is abolished.

SOUTH DAKOTA.

A married woman may own in her own right real and personal property, and manage, sell, convey, and devise the same as freely as though unmarried. She may make contracts and sue or be sued thereon. Neither husband nor wife has any interest in the property of the other, or is answerable for the other's acts. Husband and wife may make contracts with each other respecting property as though unmarried. The earnings or separate property of the wife are not liable for the debts of the husband. Women attain their majority at eighteen. Curtesy and dower are abolished.

TENNESSEE.

The husband's interest in his wife's lands cannot be taken by legal process for his debts, nor can he sell it unless she join in the deed. Personal property of the wife is exempt from liability for her husband's debts contracted before marriage. Otherwise, her general personal property, whether acquired before marriage or after, becomes, after being reduced to possession by the husband, his property, and is subject to his debts, contracts, and disposition as his own, but property owned by her at marriage or afterwards acquired by devise or descent is liable first to her creditors. He is not liable for her antenuptial contracts. Her separate property is not liable for his debts otherwise than as authorized in the instrument under which she acquired it. She cannot contract to sell her real estate, but may convey it jointly with her husband on private examination, and may convey without him, subject to his curtesy. If living apart from her husband she may dispose of her lands as an unmarried woman. Her separate property she can dispose of by deed or will, as though unmarried, unless the power of disposition is expressly withheld. Her separate property is not liable for her support or that of her children unless she expressly consent. Generally the wife, as at common law, has no power to bind herself or her property by contract, but she is liable as though unmarried for debts contracted in any mercantile or manufacturing business in which she may be engaged. If husband or wife effect insurance on his life, upon his death the money goes to his wife and children, free from his debts.

TEXAS.

In TEXAS, the marriage of a female minor gives her all the right she would have if of age. All property acquired by either party before marriage, or by gift, devise, or descent afterwards, is the separate property of each, but the husband has the management of the whole. Property acquired by either during marriage in other ways is common; the husband may dispose of it during coverture, and it is liable for their debts contracted during marriage. If there are no children the whole goes to the survivor, otherwise one-half. The parties may be jointly sued on contracts of the wife for necessaries and for expenses benefiting her separate estate. Execution may be levied on common property, or, if there be none, on her separate property. Marriage agreements must be made before a notary, and may be acknowledged by a minor, with the parent's or guardian's consent, and are unalterable after marriage. A reservation of property therein to be good must be recorded. Husband and wife may sue jointly and separately for her effects. The wife acts jointly with her husband when she is appointed executrix or administratrix. On the death of either the survivor takes the common property, subject to its debts, nor is it necessary for the husband to administer on such property on her death, as he has the same control of it then that he had in her lifetime. In case of his death she has the same control till she marries, when it will be subject to administration. Dower is abolished. Husband may fill antecedent contracts and be compelled to give bonds for the proper management of the common property. Her separate property is not chargeable with necessaries procured for him. A married woman cannot contract as a partner in business or embark her separate means in trade. Females are of age at twenty-one.

UTAH.

All property owned by either husband or wife, whether acquired before or after marriage, is separate property and may be held and disposed of without limitation or restriction by reason of coverture. A married woman may carry on business with her separate property, and her notes and contracts in reference to such business are binding on her. She may make a will, as if sole. Dower and curtesy are abolished. Majority at age of eighteen.

VERMONT.

The real estate of a married woman, and the rents, issues, and products thereof, and, during coverture, her husband's interest in the same, cannot be levied upon for the sole debts of the husband, except that such annual products may be taken for debts created for necessaries for his wife and family, or for labor or materials furnished upon, or for cultivation or improvement of such real estate. A married woman's separate property, whether acquired before or after marriage, is not liable for her husband's debts, or for debts contracted for the support of herself or children. All personal property acquired by a married woman during coverture by inheritance or distribution is held to her sole and separate use. Her earnings are not subject to attachment by trustee process for her husband's debts. The husband must join in conveyance of her real estate. Dower is allowed only in real estate of which the husband died seized. She may make contracts with any person except her husband, and her separate estate is liable therefor. Females become of age at eighteen. A married woman may dispose of her property, real and personal, by will. A married woman may be guardian, executrix, administratrix, or trustee.

VIRGINIA.

All real and personal estate to which any woman is entitled at the time of her marriage, or which she may subsequently acquire, is her separate estate, not subject to the use, control, or disposal of her husband, or to liability for his debts. She may manage and dispose of her property as if sole, except that she cannot deprive her husband of his right to curtesy in her real estate. She may engage in trade and carry on business as if unmarried, and the proceeds of her labor and earnings of her business are her separate property. She may make contracts and sue and be sued thereon as though unmarried, and any judgment against her may be enforced against her separate estate. Her contracts in reference to her separate estate, business, or labor are not binding upon her husband or his estate, and when married after March 31, 1875, he is not liable for her antenuptial debts. Every contract made by a married woman is presumed to be with reference to her separate estate and binding thereon. If husband wilfully abandons or deserts his wife, and such abandonment or desertion continues until her death, he loses all rights in her separate estate.

WASHINGTON.

All property, real and personal, owned by the husband or wife before marriage, and that acquired afterwards by gift, devise, or descent, is separate property. All property acquired during marriage, except by gift, devise, or descent, is their common property. The husband has the management and control of the community property and may dispose of the personal property, but cannot sell or encumber the real estate unless the wife joins. They may convey their respective interests in common property directly to each other. A married woman may contract, and sue and be sued, as though unmarried. All laws imposing civil disabilities on the wife which are not imposed also upon the husband are abolished. The rights of both parents to the care and custody of children are equal. Dower and curtesy are abolished. A woman is of full age at the age of eighteen.

WEST VIRGINIA.

In West Virginia, the real and personal property of a married woman acquired from any person other than her husband is secured to her separate use, free from the control or debts of her husband. And her earnings, and the real and personal property purchased with the proceeds thereof, remain her separate property free from his control or debts. If living separate and apart from her husband, she may convey her property, otherwise if the property be real estate, her husband must join in the deed. She may insure her husband's life for her own benefit, provided the premium does not exceed one hundred and fifty dollars. She may hold and enjoy patents for her inventions; may make deposits in the bank; may hold stock in corporations (other than mutual fire insurance companies), and vote on the same. Her husband is liable for her debts contracted before marriage only to the extent of the property received by him through her. She may sue and be sued alone in regard to her separate estate. If living apart from her husband she may carry on business in her own name and the capital and profits of such business are her separate property.

WISCONSIN.

The real and personal property of the wife at the time of marriage, and the income thereof, and any which she may receive by inheritance, gift, grant, devise, or bequest from any person other than her husband, is her separate property, not subject to the disposal of the husband, or liable for his debts. She may convey her property, real or personal, as if unmarried, and her husband need not join in her deed, but will, notwithstanding, be barred of any right of curtesy. A deed or mortgage of the homestead is void without her signature. The wife's individual earnings are her separate property. A policy of insurance for the benefit of a married woman inures to her sole and separate use and that of her children. Her separate estate is liable for debts contracted by her on its credit, but is not liable for family expenses except by express contract. She may dispose of her separate estate in all respects as an unmarried woman, and may deal with her husband in reference to such estate in the same manner as with a stranger. Women become of age at twenty-one, but may make a will and bar dower at eighteen.

WYOMING.

The rights of a married woman in respect to her property are nearly the same as though she were unmarried. She may make a will, sue and be sued, make contracts, carry on business, retain her own earnings, hold and convey property, real and personal, free from the control or interference of her husband, and from liability for his debts. She may hold office and vote at elections. She cannot, however, be appointed administratrix. Dower and curtesy are abolished.

CANADA.

In the provinces of the Dominion, generally, a married woman holds all her property and earnings free from the control of her husband. It is liable for her debts before marriage, and her husband is not. She may manage it and bequeath it. She is entitled to dower, but there is no tenancy by curtesy. In the Province of Quebec the law is modified by the French law. There all the personal property and gains of both parties are put together and form the community property, which the husband administers. Each can bequeath only his or her interest, and the heirs of each inherit the interest of each.

It should be added, that the wife may everywhere even by common law be the agent of the husband, and transact for him his business transactions, making, accepting, or indorsing bills or notes, purchasing goods, rendering bills, collecting money and receipting for it, and in general entering into any contract so as to bind him, if she has his authority to do so. And while they continue to live together, the law considers the wife as clothed with authority by the husband to buy for him and his family all things necessary in kind and quantity for the proper support of his family; and for such purchases made by her, he is liable.

The husband is responsible for necessaries supplied to his wife, if he does not supply them himself. And he continues so liable if he turns her out of his house, or otherwise separates himself from her, without good cause. But he is not so liable if she deserts him (unless on extreme provocation), or if he turns her away for good cause.

If she leaves him because he treats her so ill that she has good right to go from him and his house, this is the same thing as turning her away; and she carries with her his credit for all necessaries supplied to her. But what the misconduct must be to give this right, is uncertain. Some English cases are very severe on this point. In one, a husband brought a prostitute into his house, and confined his wife to her own room under pretence of her insanity. But the court held this to be insufficient. The Supreme Court of New York, in commenting upon this case, said that "the doctrine contained in it cannot be law in a Christian country." In America the law must be, and undoubtedly is, that the wife is not obliged to stay and endure cruelty or indecency.

It may be added, that if a man lives with a woman as his wife, and represents her to be so, he is liable for necessaries supplied to her, and for her contracts, in the same way as if she were his wife; and this even to one who knows that she is not his wife.

The statutes of which we have given an abstract are intended to secure to a married woman all her rights. But in all parts of this country, women about to marry—or their friends for them—often wish to secure to them certain powers and rights, and to limit these in certain ways, or to make sure that their property is in safe and skilful hands. This can only be done by conveying and transferring the property to TRUSTEES; that is, to certain persons to hold the same in trust. This is done by a legal instrument, which is almost always an *Indenture;* by which is meant an instrument under seal between two or more parties. This instrument must set forth precisely, and with legal accuracy, just what the trust is; that is to say, just what the trustees, or the woman, or her husband *may* do, and just what they *must* do. This is one of those instruments which require peculiar care and exactness. We give as models, or forms, two, differing in their terms and purposes. Both were drawn by very skilful lawyers, and with such changes, of omission or addition or alteration, as the circumstances of any case or the wishes of the parties make necessary, will be useful and safe guides in the preparation of such instruments.

(4.)

An Indenture to put in Trust the Property of an Unmarried Woman.

This Indenture of two parts, made and concluded this day of , A.D. nineteen hundred and , by and between of , single woman, of the first part, and , and , of , of the second part,

Witnesseth, That the said party of the first part is seized and possessed of certain real and personal estate, to wit, one undivided moiety of the reversion in and of a messuage and land in , bounded as follows:

a mortgage of a lot of land bounded on Street, and described in the deed of to , which is recorded in the Registry of Deeds, lib. , fol. ; a mortgage of a lot of land bounded on Street, and described in the deed of , recorded in the said Registry, lib. , fol. ; a mortgage of two lots of land bounded on Street, and described in the deed of to , recorded in the said Registry, lib. , fol. ; a mortgage of a lot of land bounded on Street, and described in the deed of to recorded in the Registry aforesaid, lib. , fol. ; one hundred shares in the capital stock of the Bank in ; twenty-five shares in the capital stock of the Bank in ; and fifty shares in the capital stock of the Bank of ; also a note of hand signed by the said , for the sum of fifteen thousand dollars; a note of hand signed by the said , for the sum of three thousand dollars; a note of hand signed by and , for the sum of two thousand five hundred dollars; a note of hand signed by , for the sum of six thousand dollars, which notes are severally secured by the lands and tenements, mortgaged as aforesaid; also a note of hand signed by for the sum of one thousand dollars.

All which real and personal estate the said party of the first part is desirous that the party of the second part should have and hold in trust for certain uses and purposes hereinafter set forth and expressed; and in conformity with said intention, and for the purpose of carrying the same into effect, the said party of the first part, in consideration of the sum of five dollars paid to her by the party of the second part, the receipt of which she doth hereby acknowledge, and for divers other good considerations moving her thereto, hath given, granted, sold, and conveyed, and doth give, grant, bargain, sell, and convey, all the said lands, tenements, and real estate, and doth hereby bargain, sell, transfer, assign, and set over all the aforesaid chattels and personal estate, as the same are above specified and described, unto the said and , and their heirs and assigns. To have and to hold the said granted premises unto the said and , and their heirs and assigns, and to the survivor of them and his heirs and assigns forever to their own use, but in trust nevertheless for the purposes, objects, and intents hereinafter set forth and expressed, and for none other, namely:

First, That the said trustees and their successors in the said trust shall permit the said party of the first part, without any hindrance or interference by them, so long as she shall remain sole and unmarried, and shall see fit so to do, to receive and take in her proper person, or by her agent or attorney, the rents, income, dividends, interest, and profits of the said trust estate, real and personal, without any accountability therefor, to them the said parties of the second part; but if required by her, the said party of the first part, so to do, the said trustees and their successors shall collect and receive the said rents, income, and profits of the trust estate, and shall from time to time pay over the same unto the said party of the first part for her own use.

Secondly, That from and after the solemnization of the marriage of the said party of the first part, whenever that event may take place, the said trustees and their successors shall collect, take, and receive all the rents, income, and profits of the trust estate, real and personal, and shall from time to time pay over the same to the said party of the first part, to and upon her separate order or receipt, made and signed by her, at or about the time of such payments respectively, and for her proper use, free from the control or interference of any husband she may have.

Thirdly, That at and after the decease of said party of the first part, the said trustees and their successors shall be seized and possessed of the said trust estate to and for the use of such person or persons as the said party of the first part, by any last will and testament, duly executed, if she die sole and unmarried, or, in case she be at her decease a married woman, by any paper writing signed by her in presence of two or more credible witnesses, shall order, and appoint to take, receive, and hold the same, and in such shares and manner, and upon such terms and conditions, as she shall direct, order, and appoint as aforesaid; and in case the said party of the first part shall omit to make any such will or testamentary appointment, then the said trustees and their successors shall hold the trust estate to the use of such person or persons as by the laws of this Commonwealth would, in case the party of the first part had died seized and possessed of the then existing trust property in her own right, have been entitled to the same as heirs-at-law, or distributees; *provided always*, that in such case the husband of the said party of the first part, if she leave a husband, shall be entitled to his life estate in all the real estate, as if he were tenant by the curtesy in and of the same, and be subject to all the duties incident to a tenant by the curtesy.

Fourthly, That the said trustees and their successors shall keep the said trust estate, real and personal, constantly invested in the most safe and profitable manner in their power, but relying always on their discretion in this behalf, and shall accordingly have power to sell and dispose of any of the said trust estate, and to make and pass all necessary deeds and instruments of conveyance thereof, and to purchase any other estate, real or personal and the same to sell again, and so from time to time to change the property composing the trust fund and estate; provided always, that all real and personal estate which may be purchased by them the said trustees with the trust moneys, or the proceeds of sale of the trust property, shall be conveyed and assigned to them and their successors as trustees as aforesaid, and shall be holden always upon the same trusts, and with the same powers, and for the same purposes, as are set forth and declared in this indenture of and concerning the estate firstly above described and conveyed to the said trustees.

Fifthly, That the said trustees or their successors, in case the said party of the first part shall so order and direct, shall invest the trust money or estate, or such part thereof as they shall be ordered as aforesaid, in the purchase of such house for the habitation and dwelling of the said party of the first part as she may select, and shall lay out and expend such other part of the said trust money and estate as she, the said party, shall order and direct, in the purchase of such furniture, plate, horses, and equipages, as she may choose and select for her own use; and shall permit her, the said party of the first part, with any husband she may have, to occupy and inhabit the said house, and to use and enjoy the said furniture, plate, carriages, and horses without impeachment of waste, and without any accountability to them the said trustees for the reasonable wear and use thereof, or injury by casualty; and the trustees shall keep the said house and furniture insured against fire, and, in case of loss or injury by fire, shall lay out and expend the money which they may receive from the assurers, in the repairing or rebuilding of the said house, if so directed by the said party of the first part, and in the purchase of other and new furniture, plate, horses, and equipages in place of those which have been injured or destroyed by fire, and shall permit the said party of the first part to use and enjoy the same in manner aforesaid. And the said trustees and their successors shall, when required by the said party of the first part so to do, sell and dispose of any house which may have been purchased by them for the personal occupation and habitation of the said party of the first part, and shall in manner aforesaid lay out the proceeds of sale of such house, and such other moneys as she shall direct, in the purchase of such other house as she shall select and direct them to purchase, and shall permit her to occupy the same in manner above set forth and expressed; and they shall also, when directed by the said party of the first part, sell and dispose of any of the furniture and other chattels, so as aforesaid, purchased by them for her use, and shall from time to time lay out and expend the proceeds of such sales and such other sums of money as they shall be directed by the said party of the first part to do, in the purchase of such other furniture, plate, horses, and equipages as she shall select for her own use; and shall permit her to use and enjoy the same in manner aforesaid; provided always, that in case of any attempt by any person to sell or remove the said furniture or other chattels out of the personal care and custody of the party of the first part, without the consent of the trustees, they shall forthwith take possession thereof, and convert the chattels so attempted to be removed or sold, into money, and shall hold the said money upon the trusts and for the uses set forth in this indenture; and in all the cases in which any order or direction shall be given by the said party of the first part it shall be in writing, and be signed by her in presence of one witness at least.

Sixthly, That in case of the decease of the said trustees, or either of them, others shall be nominated by the party of the first part (if she see fit so to do), to be appointed as trustees in the place of the deceased; and upon such nomination being made and notified to the surviving trustee, he shall forthwith, if such person be suitable, make and execute all such instruments in the law as shall be needful in the opinion of counsel, to associate such person in the said trust, and to transfer and convey to him the same interest in the trust estate, with the same powers over the same, and subject to the same duties, as are vested in and assumed by the parties of the second part in and by this instrument and the laws of the land. And in case either of the said trustees, the parties of the second part, or their successors, shall wish to resign said trust, they shall be at liberty to do so, first giving reasonable notice to the party of the first part, that she may find some suitable person, who shall be acceptable to the remaining trustee, to assume the said trust in place of the trustee resigning; and the same proceedings shall then be had for the introduction and appointment of a new trustee as are above provided in case of the decease of a trustee ; and in case of the decease or resignation at any time of any of the persons who may be hereafter appointed trustees, in manner aforesaid, similar proceedings shall be had for supplying the vacancy created by such decease or resignation. And the trust fund, property, and estate shall always be had and held by the persons so appointed from time to time in trust for the uses and purposes set forth in this indenture, and none other. And all nominations made as aforesaid shall be in writing.

Seventhly, That the purchasers of any estate, real or personal, which may be sold and conveyed by the trustees under this indenture, shall not be bound to see to the application of the purchase-money; but the receipt and acquittance of the trustees shall be a full and adequate discharge to such purchasers for such purchase-money.

Eighthly, That all the expenses and incidental charges of the trustees shall be deducted from the income of the trust property, as well as a reasonable allowance to the trustees for their own services.

Ninthly, That the resignation of any trustee shall not be, nor be pleaded as, a bar to the chancery jurisdiction of the courts of the Commonwealth, in case a resort against such trustee to the said court shall be necessary.

Tenthly, That the trustees under this indenture, each for himself and not for each other, shall be responsible for the want of due diligence only in the execution of the said trusts, and for their wilful defaults, and in case of the omission by the party of the first part to nominate a successor to either of the parties of the second part, or to any person appointed instead of them, or either of them who may resign or decease, the surviving or continuing trustee shall have power and authority to execute all the trusts herein specified and declared, in as ample manner as both the said parties of the second part might jointly have done.

In Testimony Whereof, The said and hereto set their hands and seals, the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of
(*Witnesses.*)

May 19

Then the within-named acknowledged this instrument to be his free act and deed before me.

(Signed) *Justice of the Peace.*

(5.)

Another Form of Indenture in Trust, for Property of Unmarried Women.

This Indenture, Made and concluded this day of , in the year of our Lord one thousand nine hundred and , by and between , of in the county of , single woman, of the one part, and of said the father of the said , of the other part: Witnesseth,

Whereas the said is seized and possessed in her own right, of the following-described real estate;

and is also seized and possessed of a certain piece of land, situate in said ; with the buildings thereon standing, and privileges and appurtenances thereto belonging; the whole of which were conveyed by to , by deed bearing date the of , in the year of our Lord one thousand eight hundred , and recorded in the Registry of Deeds for said county, lib. , fol. . And whereas the said is possessed of the following personal estate: to wit, of shares, of the capital stock, of the Bank in , and is also possessed of the promissory note of for the sum of dollars, dated and payable ; and also of the bond of , and , dated the day of , in the year of our Lord one thousand nine hundred and , conditioned for the payment of dollars and interest. And whereas she, the said , is desirous of securing the said estate, both real and personal, in the event of her marriage, to her sole use and benefit; and for this purpose it hath been agreed, that all the estate and property aforesaid shall be granted, assigned, and transferred unto the said , and to such other trustee as shall hereafter be appointed according to the provisions hereinafter expressed, to be held in trust by them for the separate and sole use and benefit of her, the said , and her heirs (notwithstanding any such coverture), upon the terms and conditions, for the uses, intents, and purposes, under the limitations, and for and during the time, as hereinafter is expressed.

Now, this indenture witnesseth, that the said , in consideration of the premises, and of the covenants hereinafter contained, and also of one dollar now paid to her by the said , the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and transferred, and by these presents doth grant, bargain, sell, and transfer, unto the said , his heirs and assigns, forever, all the real and personal estate, stocks, notes, and bond, hereinbefore described and specified:

To have and to hold the same to him, the said , his heirs and assigns, forever, to and for the several uses, trusts, and purposes, and subject to the several provisions, limitations, powers, and agreements, hereinafter limited, declared, and expressed; that is to say, to the sole use and behoof of the said and her heirs until the solemnization of any such marriage, and, from and immediately afterwards, to and for the following uses, intents, and purposes, to wit:

That the said estate, both real and personal, stocks, notes, and bond, shall be held, by him, the said and his successor in said trust in the manner hereinafter expressed and provided, to the sole use and separate benefit of her the said , without being liable to the debts, incumbrances, or control of any husband she may have during the existence and continuance of said trust; that said shall, from time to time, lease and demise said real estate to the best profit and advantage, and, at such time as he shall see fit and think proper, sell and dispose of all or any part of said real estate, upon the most advantageous terms, for the interest of said , and shall invest the proceeds; and, upon payment of the stocks, notes, or bond aforesaid, invest the same in like manner; that he shall pay all the rents and profits of said real estate, and the interest and income of said funds, and also the interest and income of said personal property hereby assigned, and all the net profits arising and accruing therefrom, as well as such portion of the principal as he shall judge necessary for her convenience and support, unto her, the , or to such person or persons as she shall in writing, without the signature or interference of any husband, appoint, for and during the natural life of her, the said , that is to say, for and during the term for which said trust shall continue, according to the provisions and limitations hereinafter expressed; and, after the decease of the said , the remaining income and profit unpaid, to the child or children of the said , if she shall leave any; and, upon such decease, grant, convey, and transfer the same estate, both real and personal, and any investments in funds, unto such child or children, his and their heirs and assigns, forever; and also grant and convey, in like manner, any real estate which may be purchased with the proceeds of said property; and in case the said should die without issue, then to grant, convey, and transfer the same, in like manner, unto the heirs-at-law of her the said .

And the said , for himself, his heirs, executors, and administrators, doth covenant, grant, and agree, to and with the said , her executors and administrators, that in case she, the said , should desire any real estate to be purchased with any part of said capital stock, funds, or interest, of the estate and property hereby conveyed, and it should be deemed advantageous and proper by the said to comply therewith, then he will make a purchase thereof, and take deeds of conveyance of such estate in his name, as trustee, and will hold the same subject to the like trusts, limitations, powers, and agreements as are herein limited, declared, and expressed; and will pay over the rents and income thereof as is above provided, unless she, the said , shall choose to occupy and live on the same; and, in such case, no rents shall be exacted or required of any husband of the said . And upon the happening of the death of him, the said , he doth further covenant that his heirs or executors or administrators shall and will, as soon as practicable thereafter, make good and sufficient instruments of conveyance to transfer and grant the aforesaid estate, both real and personal, or such parts thereof as shall then remain undisposed of, and such as may be purchased by him, said , in pursuance of the trusts and intent of this indenture, unto such person as shall be appointed the trustee of the said for that purpose by the Judge of Probate for the District of for the time being, who is, in that event, authorized to make the appointment.

In Witness Whereof, The said parties have hereto interchangeably set their hands and seals, the day and year first above written.

(Signatures.) *(Seals.)*

Signed, Sealed, and Delivered in Presence of
(Witness.)

, *ss.* 30th September, A. D. 19 .

Then personally appeared the above-named and and severally acknowledged this indenture to be their free act and deed.

(Signature.) *Justice of the Peace.*

CHAPTER VI.

AGREEMENT AND ASSENT.

SECTION I.

THE LEGAL MEANING OF AGREEMENT.

No contract which the law will recognize and enforce exists, until the parties to it have agreed upon the same thing, in the same sense. Thus, in a case where the defendants by letter offered to the plaintiffs a certain quantity of "good" barley, at a certain price. Plaintiffs replied: "We accept your offer, expecting you will give us fine barley and full weight." The jury found that there was a distinction in the trade between the words "good" and "fine," and the court held that there was not a sufficient acceptance to sustain an action for non-delivery of the barley. So where a person sent an order to a merchant for a particular quantity of goods on certain terms of credit, and the merchant sent a less quantity of goods, and at a shorter credit, and the goods were lost by the way, it was held by the court that the merchant must bear the loss, for there was no sale or contract between the parties.

There is an apparent exception to this rule, when, for example, A declares that he was not understood by B, or did not understand B, in a certain transaction, and that there is therefore no bargain between them; and B replies by showing that the language used on both sides was explicit and unequivocal, and constituted a distinct contract. Here, B would prevail. The reason is, that the law presumes that every person means that which he distinctly says. If A had offered to sell B his horse for twenty dollars, and received the money, and then tendered to B his cow, on the ground that he was thinking only of his *cow*, and used the word *horse* by mistake, this would not avoid his obligation, unless he could show that the mistake was known to B; and then the bargain would be fraudulent on B's part. This would be an extreme case; but difficult questions of this sort often arise. If A had agreed to sell, and had actually delivered, a cargo of shingles at "3.25," supposing that he was to receive that price for a "bunch," which contains five hundred, and B supposed that he had bought them at that price for a "thousand," which view should prevail? The answer would be, first, that if there was, honestly and actually, a mutual mistake, there was no contract, and the shingles should be returned. But, secondly, if a jury should be satisfied, from the words used, from the usage prevailing where the bargain was made and known to the parties, or from other circumstances attending the bargain, that B knew that A was expecting that price for a bunch, B would have to pay it; and if they were satisfied that A knew that B supposed himself to be buying the shingles by the thousand, then A could not reclaim the shingles, nor recover more than that price. There was such a case so decided.

In construing a contract, the actual and honest intention of the parties is always regarded as an important guide. But it must be their intention as expressed in the contract.

If the parties, or either of them, show that a bargain was honestly but mistakenly made, which was materially different from that intended to be made, it would be a good ground for declaring that there was no contract.

Mistakes of fact in a contract can be corrected by the courts, but not mistakes of law; no man being permitted to take advantage of a mistake of the law, either to enforce a right, or avoid an obligation; for it would be obviously dangerous and unwise to encourage ignorance of the law by permitting a party to profit, or to escape, by his ignorance. But the law which one is required at his peril to know, is the law of his own country. Ignorance of the law of a foreign state is ignorance of fact. In this respect the several States of the Union are foreign to each other. Hence, money paid through ignorance or mistake of the law of another State may be recovered back.

Fraud annuls all obligation and all contracts into which it enters, and the law relieves the party defrauded. If both of the parties act fraudulently, neither can take advantage of the fraud of the other; and if one acts fraudulently, he cannot set his own fraud aside for his own benefit. Thus, if one gives a fraudulent bill of sale of property, for the purpose of defrauding his creditors, *he* cannot set that bill aside and annul that sale, although those who are injured by it may.

SECTION II.

WHAT IS AN ASSENT?

The most important application of the rule stated at the beginning of this chapter, is the requirement that an acceptance of a proposition must be a simple and direct affirmative, in order to constitute a contract. For if the party receiving the proposition or offer accepts it on any condition, or with any change of its terms or provisions which is not altogether immaterial, it is no contract until the party making the offer consents to those modifications.

Therefore, if a party offers to buy certain goods at a certain price, and directs how the goods shall be sent to him, and the owner accepts the offer and sends the goods as directed, and they are lost on the way, it is the buyer's loss, because the goods were his by the sale, which was completed when the offer was accepted. But if the owner accepts the offer, and in his acceptance makes any material modification of its terms, and then sends the goods, and they are lost, it is his loss now, because the contract of sale was not completed.

Nor will a voluntary compliance with the conditions and terms of a proposed contract always make it a contract obligatory on the other party, unless there have been an accession to, or an acceptance of, the proposition itself. In general, if A says to B, if you will do this, I will do that; and B instantly does what was proposed to him, this doing so is an acceptance, and A is bound. But if the doing of the thing may be something else than an acceptance of the offer, or if the thing may be done for some other reason than to signify an acceptance or assent, there must be express acceptance also, or there is no bargain.

SECTION III.

OFFERS MADE ON TIME.

IT sometimes happens that one party makes another a certain offer, and gives him a certain time in which he may accept it. The law on this subject was once somewhat uncertain, but may now be considered as settled. It is this: If A makes an offer to B, which B at once accepts, there is a bargain. But it is not necessary that the acceptance should follow the offer instantaneously. B may take time to consider, and although A may expressly withdraw his offer at any time before acceptance, yet if he does not do so, B may accept within a reasonable time; and if this is done, A cannot say: "I have changed my mind." What is a reasonable time must depend upon the circumstances of each case. If A when he makes the offer says to B that he may have a certain time wherein to accept it, and is paid by B for thus giving him time, he cannot withdraw the offer; or if he withdraws it, for this breach of his contract, the other party, B, may have his action for damages. If A is not paid for giving the time, A may then withdraw the offer at once, or whenever he pleases, provided B has not previously accepted it. But if B has accepted the offer before the time which was given expired, and before the offer was withdrawn, then A is bound, although he gave the time voluntarily and without consideration. For his offer is to be regarded as a continuing offer during all the time given, unless it be withdrawn. A railroad company asked for the terms of certain land they thought they might wish to buy. The owner said in a letter, they might have it at a certain price, if they took it within thirty days. After some twenty-five days the railroad company wrote accepting the offer. The owner says, No, I have altered my mind; the land is worth more; and I have a right to withdraw my offer, because you paid me nothing for the time of thirty days allowed you. But the court held that he was bound, because this was an offer continued through the thirty days, unless withdrawn. They said that the writing when made was without consideration, and did not therefore form a contract. It was then but an offer to contract, and the party making the offer most undoubtedly might have withdrawn it at any time before acceptance. But when the offer was accepted, the minds of the parties met, and the contract was complete, and no withdrawal could then be made.

SECTION IV.

A BARGAIN BY CORRESPONDENCE.

When a contract is made by correspondence, the question occurs, At what time, or by what act, is the contract completed? The law as now settled in this country may be stated thus. If A writes to B proposing to him a contract, this is a continued proposition or offer of A until it reaches B, and for such time afterwards as would give B a reasonable opportunity of accepting it. It may be withdrawn by A at any time before acceptance; but is not withdrawn in law until a notice of withdrawal reaches B. This is the important point. Thus if A, in Boston, writes to B, in New Orleans, offering him a certain price for one hundred bales of cotton; and the next day alters his mind, and writes to B, withdrawing his offer; if the first letter reaches B *before* the second reaches him, although *after* it was written and mailed, B has a right to accept the offer *before* he gets the letter withdrawing it, and by his acceptance he binds A. But if B delays his acceptance until the second letter reaches him, the offer is then effectually withdrawn. It is a sufficient acceptance if B writes to A declaring his acceptance, and puts his letter into the post-office. It seems now quite clear, that as soon as the letter leaves the post-office, or is beyond the reach of the writer, the acceptance is complete. That is, on the 5th of May, A in Boston writes to B, in New Orleans, offering to buy certain goods there at a certain price. On the 8th of May, A writes that he has altered his mind and cannot give so much, and mails the letter. On the 14th of May, B in New Orleans receives the first letter, and the next day, the 15th, answers it, saying that he accepts the offer and mails his letter. On the 17th, he receives the second letter of A withdrawing the offer. Nevertheless the bargain is complete and the goods are sold. But if B had kept his letter of acceptance by him until he had received A's letter of withdrawal, he could not then have put his letter into the mail and bound A by his acceptance.

The party making the offer by letter is not bound to use the same means for withdrawing it which he uses for making it; because any withdrawal, however made, terminates the offer, if only it reaches the other party before his acceptance. Thus, if A in the case just supposed, a week after he has sent his offer by letter, telegraphs a withdrawal to B, and this withdrawal reaches him before he accepts the offer, this withdrawal would be effectual. So if he sent his offer by letter to England, in a sailing ship, and a fortnight after sent a revocation in a steamer, or by telegraph, if this last arrives before the first arrived and was accepted, it would be an effectual revocation.

SECTION V.

WHAT EVIDENCE MAY BE RECEIVED IN REFERENCE TO A WRITTEN CONTRACT.

If an agreement upon which a party relies be oral only, it must be proved by evidence. But if the contract be reduced to writing, it proves itself; and now no evidence whatever is receivable for the purpose of varying the contract or affecting its obligations. The reasons are obvious. The law prefers written to oral evidence, from its greater precision and certainty, and because it is less open to fraud. And where parties have closed a negotiation and reduced the result to writing, it is presumed that they have written all they intended to agree to, and therefore, that what is omitted was finally rejected by them.

But some evidence may always be necessary, and therefore admissible; as, evidence of the identity of the parties to the contract, or of the things which form its subject-matter. Quite often, neither the court nor the jury can know what person, or what thing, or what land, a contract relates to, unless the parties agree in stating this, or evidence shows it. The rule on this subject is, that, while no evidence is receivable to *contradict* or *vary* a written contract, evidence may be received to explain its meaning, and show what the contract is in fact.

There are some obvious inferences from this rule. The first is, that, as evidence is admissible only to explain the contract, if the contract needs no explanation, that is, if it be by itself perfectly explicit and unambiguous, evidence is inadmissible, because it is wholly unnecessary unless it is offered to vary the meaning and force of the contract, and that is not permitted. Another, following from this, is, that if the evidence purports, under the name of explanation, to give to the contract a meaning which its words do not fairly bear, this is not permitted, because such evidence would in fact make a new contract.

A frequent use of oral evidence is to explain, by means of persons experienced in the particular subject of the contract, the meaning of technical or peculiar words and phrases; and such witnesses are called Experts, and are very freely admitted.

It may be remarked, too, that a written receipt for money is not within the general rule as to written contracts, being always open, not only to explanation, but even to contradiction, by extrinsic evidence. And this is true of the *receipt part* of any instrument. If a written instrument not only recites or acknowledges the receiving of money or goods, but contains also a contract or grant, such instrument, as to the contract or grant, is no more to be affected by any evidence than if it contained no receipt; but as to the receipt itself, it may be varied or contradicted in the same manner as if the instrument contained nothing else. Thus, if a deed recites that it was made in "consideration of ten thousand dollars, the receipt whereof is hereby acknowledged," the grantor may sue for the money, or any part of it, and prove that the amount was not paid; for this affects only the *receipt part* of the deed. But he cannot say that the grant of the land was void because he never had his money, nor that any agreement the deed contained was void for such a reason; because, if he proved that the money was not paid for the purpose of thus annulling his grant or agreement, he would be offering evidence to affect the *other part* of the deed; and that he cannot do.

A legal inference from a written promise can no more be rebutted by evidence than if it were written. Thus, if A, by his note, promises to pay B a sum of money in sixty days, he cannot when called upon resist the claim by proving that B, when the note was made, agreed to wait ninety days; and if A promise in writing to pay money, and no time is set, this is by force of law a promise to pay on demand, and evidence is not receivable to show that a distant period was agreed upon.

Generally speaking, all written instruments are construed and interpreted by the law according to the simple, customary, and natural meaning of the words used.

It should be added, that when a contract is so obscure or uncertain that it must be set wholly aside, and regarded as no contract whatever, it can have no force or effect upon the rights or obligations of the parties, but all of these are the same as if they had not made the contract.

SECTION VI.

CUSTOM, OR USAGE.

A CUSTOM, or usage, which may be regarded as appropriate to a contract, has often great weight in reference to it. This it may have, first, as to the construction or meaning of its words; and next, as to the intention or understanding of the parties.

The ground and reason for this influence of a custom is this. If it exists so widely and uniformly among such persons as make the contract, and for so long a time, that every one of them must be considered as knowing it, and acting with reference to it, then it ought to have the same force as if both parties expressly adopted it; because each party has a right to think that the other acted upon it.

Sometimes this is carried very far. In one English case, a man had agreed to leave in a certain rabbit warren *ten thousand rabbits*, and the other party was permitted to prove that, by the usage of that trade, a thousand meant one hundred dozen, or *twelve hundred.* In an American case, a man agreed to pay a carpenter twelve shillings a day for every man employed by him about a certain building; the carpenter was permitted to prove that, by the usage of that trade, "a day" meant ten hours' work; and as his men had worked twelve and a half, he was permitted to charge fifteen shillings, or for one and one-fourth days' work, for every day so spent.

In these cases the custom affected the meaning of the words. But it also has the effect of words; as if a merchant employed a broker to sell his ship, and nothing was said about terms, and the broker did something about it, and the ship was sold, if the broker could prove a universal and well-established custom of that place, that for doing what he did under the employment he was entitled to full commissions, he would have them, as much as if they were expressly promised.

Any custom will be regarded by the court, which comes within the *reason* of the rule that makes a custom a part of the contract. It comes within the reason only when it is *so far* established, and *so well* known to the parties, that it must be supposed that their contract was made with reference to it. For this purpose, the custom must be established and not casual, uniform and not varying, general and not personal, and known to all the parties. But the degree in which these characteristics must belong to the custom will depend in each case upon its peculiar circumstances. Let us suppose a contract for the making of an article which has not been made until within a dozen years, and only by a dozen persons. Words are used in this contract of which the meaning is to be ascertained; and it is proved that these words have been used and understood in reference to this article, always, by all who have ever made it, in one way. Then this custom will be permitted to explain and interpret the words of the parties. But if the article had been made a hundred years or more, in many countries and by multitudes of persons, the evidence of this use of these words by a dozen persons in a dozen years would not be sufficient to give to this practice the force of *custom*.

Other facts must be considered; as, how far the meaning sought to be put on the words by custom varies from their common meaning in the dictionary, or from general use; and whether other makers of the article use these words in various senses, or use other words to express the alleged meaning. Because the *main question* is always this: Can it be said that both parties *must* have used, or *ought* to have used, these words in this sense, and that each party had good reason to believe that the other party so used them? Thus when the brief but violent "Morus multicaulis" (or mulberry) speculation prevailed, a few years ago, a man made a contract to sell and deliver a certain number of the trees "a foot high;" and the buyer was permitted to prove that, by the usage and custom of all who dealt in that article, the length was measured to the top of the ripe wood only, rejecting the green and immature top; and the "foot high" was to be so understood.

No custom, however, can be proved or permitted to influence the construction of a contract, or vary the rights of the parties, if the custom itself be illegal. For this would be to permit, or even oblige, parties to break the law, because others had broken it.

Nor would the courts sanction a custom which was in itself unreasonable and oppressive. There was a vessel cast ashore on the coast of Virginia, and the master sold the cargo on the spot; and on trial the jury found that he was authorized to do so by the usage there; but the Supreme Court of Massachusetts, where the ship and cargo were insured, said that the usage was unreasonable, and they would not allow it. The Supreme Court of Pennsylvania in one case refused to allow a usage, as unreasonable, by which plasterers charged half the size of the windows at the price per square yard agreed on for the plastering of a house.

Lastly, no custom, however universal, or old, or known (unless it has actually become a law), has any force whatever, if the parties see fit to exclude and refuse it by words of their contract, or provide that the thing which the custom affects shall be done in a way different from the custom. For a custom can never be set up against either the express agreement or the clear intentions of the parties.

I will now give forms for various agreements or contracts:

FORMS OF CONTRACTS OR AGREEMENTS.

Every agreement should be written, and signed by both parties, and witnessed, where this can be done; although the law absolutely requires witnesses in very few cases, and in none of mere contract. It is prudent, however, to have them, for it is a rule of law, that things which cannot be proved and things which do not exist are the same in the law.

Everything agreed upon should be written out distinctly, and care should be taken to say all that is meant, and just what is meant, and nothing else; for it is a rule of law, that no *oral* testimony shall control a *written agreement,* unless fraud can be proved. Against fraud nothing stands.

(6.)

1.—A General Agreement, sufficient for many purposes.

MUTUAL AGREEMENT OF TWO.

A. B. of (*place of residence, and business or profession*), and C. D. of (*as before*), have agreed together, at (*place*), on (*the day should always be named*), and do hereby promise and agree to and with each other, as follows: A. B., in consideration of the promises hereinafter made by C. D. (*if there are any such promises*), and of (*here state any other consideration which A. B. has*), promises and agrees to and with C. D., that (*here set forth, as above directed, the whole of what A. B. undertakes to do.*)

And C. D. in consideration (*set forth consideration and promise as before.*)

Witness our hands, to two copies of this agreement interchangeably.

A. B.
Signed and Interchanged in Presence of C. D.
E. F.
G. H.

(7.)

A General Agreement, as used in the Western States.

Articles of Agreement, Made this day of in the year of our Lord one thousand nine hundred and between party of the first part, and party of the second part,

Witnesseth, That the said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on part to be made and performed, the said party of the first part will

And the said party of the second part hereby covenants and agrees to pay to said party of the first part the sum of dollars, in the manner following: dollars cash in hand paid, the receipt whereof is hereby acknowledged, and the balance

with interest at the rate of per centum per annum, payable annually. And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by sustained, and shall have the right to

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals, the day year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in presence of

(8.)

General Contract for Mechanics' Work.

Contract made this day of A. D. 19 by and between of of the first part, and of of the second part,

Witnesseth, That the party of the first part, for the consideration hereinafter mentioned, covenants and agrees with the party of the second part to perform in a faithful and workmanlike manner the following specified work, viz.:

And in addition to the above to become responsible for all materials delivered and receipted for, the work to be commenced and to be completed and delivered free from all mechanic or other liens, on or before the day of . And the party of the second part covenants and agrees with the party of the first part, in consideration of the faithful performance of the above specified work, to pay to the party of the first part the sum of dollars, as follows:

And it is further mutually agreed by and between both parties, that in case of disagreement in reference to the performance of said work, all questions of disagreement shall be referred to and the award of said referees or a majority of them, shall be binding and final on all parties.

In Witness Whereof, We hereunto set our hands and seals on the day and year first above written.

(Signatures.) *(Seals.)*

Executed in Presence of

(9.)

An Agreement for Purchase and Sale of Lands, in Use in the Middle States.

Agreement, Made and concluded the day of A. D. 19 by and between of the State of of the first part, and of the State of of the second part,

Whereas, The party of the second part hath agreed to purchase from the party of the first part, either on his own account or for whom it may concern, certain land in Township, County, and State of

And it is agreed that the party of the second part shall have the right to divide and subdivide said land in such manner, and appropriate to his own use so much thereof as he may see fit, giving and paying to the party of the first part the sum of dollars, on or before the day of A. D. 19 , and reserving to his own use any amount for which the whole or any be sold over the said dollars.

And these Articles further Witness, That the party of the first part, for and in consideration of the premises and the sum of lawful money, to him paid by the party of the second part, at and before the execution hereof, doth covenant, promise, grant, and agree, with the party of the second part, his heirs and assigns, upon sale of said lands being made by the party of the first part, to sufficiently grant, convey, and assure said lands, with the appurtenances, to the said party of the second part, or such person or persons as he may direct; and in default of the said party of the second part paying the amount hereinbefore specified at the time mentioned, then these articles are to be deemed and considered canceled to all intents and purposes, the same as though they never had been made.

In Witness Whereof, The parties hereto have hereunto set their hands and seals the day and year first aforesaid.

(Signatures.) *(Seals.)*

Sealed and Delivered in Presence of

(10.)

An Agreement for Sale of Land, in Use in the Western States.

Articles of Agreement, Made this day of in the year one thousand nine hundred and between

of the first part, and of the second part,

Witnesseth, That the party of the first part, at the request of the party of the second part, and a consideration of the money to be paid, and the covenants as herein expressed to be performed by the party of the second part (the prompt performance of which payments and covenants being a condition precedent, and time being of the essence of said condition), hereby agree to sell to the said party of the second part, all certain lot and parcel of land, situate in County of and State of , known and designated as follows, viz.:

with the privileges and appurtenances thereto belonging.

And the said party of the second part, in consideration of the premises, hereby agrees to pay the party of the first part, his or their executors, administrators, or assigns, in days, the sum of dollars, as follows, viz.:

with interest at the rate of per cent. per annum from to be paid semi-annually in each year, on the whole sum from time to time remaining unpaid. And also that he will well and faithfully, in due season, pay, or cause to be paid, all ordinary taxes assessed for revenue purposes upon said premises, or any part thereof, subsequent to the year 18 . And also all other assessments which now are, or may be hereafter, charged or assessed upon or against said premises, or any part thereof. But in case the said party of the second part fail to pay any or all such taxes or assessments upon said premises or appurtenances, or any part thereof, whenever and as soon as the same shall become due and payable; and the party of the first part shall pay from time to time, or at any time, any or all such taxes or assessments, or cause the same to be paid, the amount of any and all such payments so made by the party of the first part, with interest thereon from the date of payment, shall immediately thereupon become an additional consideration, and payment thereof shall be made by the party of the second part hereto, for the premises herein agreed to be conveyed.

And the said party of the first part further covenants and agrees with the said party of the second part, that upon the faithful performance by said party of the second part of undertaking in his behalf, and of the payment of principal and interest of the sum above-mentioned, in the manner specified, he the said party of the first part, shall and will, without delay, well and faithfully execute, acknowledge, and deliver in person, or by attorney duly authorized, to the party of the second part, heirs or assigns, a deed of conveyance of all the right, title, and interest of the party of the first part, of, in and to the above described premises, with the appurtenances, with full covenants of warranty, also of waiver and release of all rights of the said party of the first part, resulting from the laws of this State pertaining to the exemption of homesteads.

And it is Mutually Covenanted and Agreed, by and between the parties hereto, that in case default shall be made in the payments of principal or interest at the time or any of the times above specified for the payment thereof, and for days thereafter, this agreement, and all the preceding provisions hereof, shall be null and void, and no longer binding, at the option of said party of the first part, representatives or assigns; and all the payments which shall then have been made thereon, or in pursuance hereof, absolutely and forever forfeited to the said party of the first part; or at the election of the said party of the first part, representatives and assigns, the covenants and liability of said party of the second part shall continue and remain obligatory upon the said party of the second part, and may be enforced, and the said consideration-money, and every part thereof, with the annual interest as above specified, be collected by proper proceedings in law or equity, from the said party of the second part, heirs, executors, administrators, or assigns.

And it is Further Mutually Covenanted and Agreed, by and between the parties hereto, that in case of default in the payment stipulated to be made by the said party of the second part, or any part thereof, and the election of the party of the first part, representatives or assigns, to consider the foregoing contract of sale at an end, and prior payments forfeited, the said party of the second part, heirs, representatives or assigns, who may have possession, or the right of possession, of said premises at the time of such default, or at any time thereafter, shall be considered, and are hereby agreed and declared to be, in law and equity, the tenant or tenants at will of said party of the first part, representatives and assigns, on a rent equal to an interest of ten per cent. per annum on the whole sum of the purchase-money above specified, payable quarter-yearly in advance from the day of such default in payment of principal or interest. And after such default in payment, and election to consider the above contract of sale as void, the said party of the first part, representatives and assigns, shall and may have and exercise all the powers, rights, and remedies provided by law or equity to collect such rent, or to remove such tenant or tenants, the same as if the relation of landlord and tenant, hereby declared, were created by an original absolute lease for that purpose, on a special rent, payable quarterly on a tenure at will. And that in such case the said tenant or tenants shall and will pay, or cause to be paid, all taxes, assessments, ordinary and extraordinary, which may be laid or assessed on such premises or any part thereof, during the continuance of such tenancy; and will not permit or suffer any waste or damage to said premises or the appurtenances, but will keep and deliver up, on the termination of such tenancy, the said premises and appurtenances, in as good order and repai (ordinary wear and decay, and unavoidable injury by the elements, excepted) as they were in at the commencement of said tenancy.

In Witness Whereof, The party of the first part and the party of the second part, in own proper person, have hereunto respectively set their hands and seals on the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

(11.)

An Agreement for Warranty Deed Used in the Western States.

Articles of Agreement, made this day of in the year of our Lord one thousand nine hundred and between party of the first part, and party of the second part,

Witnesseth, That said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payment and perform the covenants hereinafter mentioned on part to be made and performed, the said party of the first part will convey and assure to the party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the following lot, piece, or parcel of ground, viz.:

And the said party of the second part hereby covenants and agrees to pay to said party of the first part, the sum of dollars, in the manner following: dollars, cash in hand paid, the receipt whereof is hereby acknowledged, and the balance

with interest at the rate of per centum per annum, payable annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land, subsequent to the year 18 . And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by sustained, and shall have the right to re-enter and take possession of the premises aforesaid.

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

(12.)

A Contract to convey Real Estate, in Use in the Middle States.

This Article of Agreement, Made and entered into the day of one thousand nine hundred and between of the first part, and of the second part,

Witnesseth, as follows: The said party of the first part hereby agrees to sell unto the said party of the second part all that parcel of land situated, bounded, and described as follows. That is to say

for the sum of

to be paid by the said party of the second part, in manner and at the times hereinafter mentioned and covenanted, on the part of the said party of the second part: And the said party of the first part further agrees, that on the day of on receiving from the said party of the second part the sum of

the said party of the first part shall and will, at
at own proper cost and expense, execute and deliver to the said party of the second part, or to assigns, a proper deed of conveyance, duly acknowledged, for the conveying and assuring to them the fee simple of the said premises, free from all incumbrances,

which deed of conveyance shall contain a general warranty, and the usual full covenants.

And the said party of the second part hereby agrees to purchase of the said party of the first part the premises above mentioned, at and for the price and sum above mentioned, and to pay to the said party of the first part the purchase-money therefor, in manner and at the times following, to wit:

And it is further agreed by and between the parties to these presents, that the said party of the first part shall have and retain the possession of said premises, and be entitled to the rents and profits thereof
until the day of when full possession of the same shall be delivered to the said party of the second part, by the said party of the first part:

And it is understood and agreed, that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

And it is further hereby agreed, that in case the said party of the first part shall fail or refuse to execute and deliver a proper deed of conveyance in manner and at the time and place above specified for that purpose, provided the party of the second part shall be ready to fulfill and perform the covenants then to be fulfilled on part; or in case the said party of the second part shall fail or refuse to pay the said sum of

at the time and place as above agreed upon, provided the party of the first part shall be ready to deliver such deed of conveyance, as aforesaid; then the party so failing shall and will pay to the other party, or assigns, the sum of dollars, which sum is hereby declared, fixed, and agreed upon, as the liquidated amount of damages to be paid by the party so failing as aforesaid, for non-performance.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

(13.)

An Agreement for the Purchase of an Estate, in Use in New England.

Articles of Agreement, Had, made, concluded, and agreed upon this day of A.D. between of of the one part, and of of the other part. First, the said (*seller*) in consideration of the sum of to him paid by the said (*buyer*) at or before the sealing and delivery of these presents, and of the further sum of to be paid as hereinafter is mentioned, doth hereby for himself, his heirs, executors, and administrators, and every of them, covenant, promise, and agree, to and with the said his heirs, executors, and administrators, and every of them, by these presents, that he the said his heirs and assigns (and all and every other person and persons whatsoever, claiming or to claim any right, title, or interest under him, or any other person or persons whatsoever, of, in, or to the lands and premises hereinafter mentioned) shall and will, at the proper costs and charges of the said his heirs and assigns (except fees to counsel), on or before the day of next ensuing, by such conveyances, assurances, ways and means in the law, as he the said his heirs and assigns, or his or their counsel, shall reasonably devise, advise, or require, well and sufficiently grant, sell, release, convey, and assure to the said and his heirs, or to whom he or they shall appoint or direct, all that situate now in the tenure or occupation of or his assigns, with covenants to be therein contained, that the said premises, at the time of such conveyance, are free from all incumbrances and demands whatsoever (except) and all other usual and reasonable covenants. In consideration whereof, the said for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said his heirs, executors, and administrators, by these presents, that he the said his heirs, executors, or administrators, or some of them, shall and will, well and truly, pay, or cause to be paid, unto the said his heirs, executors, or administrators, the aforesaid sum of at the time of executing the said conveyances. And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties to these presents doth hereby bind himself, his heirs, executors, and administrators to the other of them, his heirs, executors, administrators, and assigns in the penal sum of

In Witness Whereof, The said parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

An agreement for the sale of lands should always state the covenants, whether of general or special warranty, which it is intended that the contemplated conveyance shall contain.

Covenants, Provisos, and Agreements, which may be Inserted in the Preceding Form.

1. *Covenant that the vendor, before the purchase is completed, shall not commit waste, or grant any new leases.*

And also that the said (*the seller*) shall not nor will, in the mean time, cut down any timber or trees, or commit any waste or spoil whatsoever, in or upon the premises, or any part thereof, nor shall or will grant any new leases of the premises, or any part thereof, without the privity or consent of the said (*the buyer*) or his heirs or assigns.

2. *Another covenant for the payment of the purchase-money.*

And the said (*the buyer*) doth hereby covenant and agree to and with the said (*the seller*) his heirs, executors, and administrators, that upon sealing and executing such conveyance and assurance of the said unto him and them as aforesaid, according to the true intent of these presents, he the said his heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said his heirs, executors, or administrators, the said sum of in full for the purchase of the said premises. (*Or there may be an agreement to retain part of the purchase-money to pay off an incumbrance, as follows:*

And it is agreed between the said parties that the said shall or may retain out of the said purchase-money the sum of for the purpose of paying off the sum of secured by a mortgage on the said premises, given by the said to bearing date when the said sum shall become due by virtue of the said mortgage.

3. *This agreement may be inserted:*

And it is agreed, that if the counsel of the said shall not approve of the title of the said to the said premises, this agreement shall be void.

4. *This proviso may be inserted:*

Provided always, and it is hereby mutually covenanted and agreed, by and between the parties to these presents, for themselves and their respective heirs, in manner as follows, viz: That in case the counsel of the said (*the buyer*) shall not approve of the title of him the said (*the seller*) to the said or in case (*the buyer*) on his view thereof (he not having ever viewed the same) will not proceed in the purchase thereof, and shall and do, within one month next after the date hereof, give notice, in writing, to the said (or to of) that he will not purchase the said then and in either of the cases, these presents shall be absolutely void; and that then he the said (*the seller*) his heirs, executors, or administrators, shall and will, within six months now next ensuing, well and truly repay, or cause to be repaid unto the said (*the buyer*) his heirs, executors, administrators, or assigns, the said sum of so by him now paid as aforesaid, together with legal interest for the same, from henceforth to be computed until payment thereof.

5. *A provision in articles of purchase, in case of the delay or default of either party.*

that if by reason of any delay, neglect, or default. by or on the part of the said (*the purchaser*) or his heirs, or his or their counsel or agents, the said conveyances of the said estates and premises shall not be ready and tendered to the said (*the vendor*) or his heirs, to be executed, on or before the said day of then and in such case, the said his shall and will pay and allow to the said his interest for the said sum of at the rate of to be computed from the day of until the said (*the principal sum*) shall be paid as aforesaid; but if, by reason of any delay, neglect or default, by or on the part of the said or any claiming under him, such conveyances as aforesaid shall not be executed on or before the said day of then and in such case, no such interest as aforesaid shall be paid or allowed during the time of such delay of the said

6. *An agreement that if a good title, &c., cannot be made on, &c., the premises shall stand as security for the money paid down, &c.*

It is hereby further agreed and declared by and between all the said parties to these presents, and particularly the said (*the vendors*) do hereby agree and declare, that in case they cannot make out a good title to, and execute and perfect such conveyances and assurances of the premises as aforesaid on or before the day of now next ensuing, then the said and every part thereof, shall remain and be a security to the said (*the purchaser*) for securing to him, his the repayment of the said sum of now by him paid as aforesaid, at or upon the said day of now next ensuing, together with interest for the same after the rate of from henceforth in the meantime and until payment thereof, which interest in such case they the said (*the purchasers*) do hereby for themselves, severally and respectively, and for their several and respective heirs, promise and agree to pay accordingly, and then, also, in such case all such rents, as he the said (*the purchaser*) shall have received, by or out of the premises as aforesaid, shall be deemed and allowed by him in part of payment of the same (*the principal purchase-money*) and interest.

7. *That if the other parties do not perform their covenants, the purchaser shall not be obliged to perform his.*

And it is mutually agreed and declared to be the true intent and meaning of these presents, that if it shall happen that any of them the said their heirs, shall neglect to perform his or their parts of the covenants and agreements herein contained, that then, and in any such case, the said his heirs, executors, and administrators, or any of them, shall not be hereby obliged to perform his and their covenants herein contained, or any of them, but shall, if he shall think fit, be absolutely discharged from the same.

(14.)

Agreement for the Sale of an Estate by Private Contract.

Articles of Agreement, Made this day of between of and of

The said agrees to sell the said all that with the appurtenances, for the sum of and will, on or before the day of next, on the receipt of the said sum of at the charges of the said execute a proper conveyance thereof, with a covenant of general warranty and against incumbrances, to the said and his heirs and assigns.

And the said agrees, that, on the execution of such conveyance, he will pay the said sum of to the said or his assigns.

And it is further agreed, that the conveyance shall be prepared by and at the expense of the said to the approbation of the respective counsel of the said and and that all taxes and outgoings in respect of the premises in the meantime shall be paid by the said And it is agreed, that the said shall receive the rents and profits of the premises, from next, to his proper use. And it is agreed, that if the said conveyance shall not be executed, and the purchase-money paid on or before the day of then the said shall pay interest for the same from the same day, unto the said after the rate of *per cent. per annum.*

In Witness Whereof,

(*Signatures.*) (*Seals.*)

(15.)

An Agreement to be signed by an Auctioneer, after a Sale by Auction.

I Hereby Acknowledge, That has been this day declared the highest bidder and purchaser of (*describe the real estate*) at the sum of ; and that he has paid into my hands the sum of as a deposit, and in part payment of the purchase-money; and I hereby agree that the vendor shall in all respects fulfil the conditions of sale.*

Witness my hand,

(*Signatures.*) (*Seals.*)

---

* It would be well to have the conditions of sale annexed, and refer to them by saying *hereunto annexed.*

(16.)

An Agreement to be signed by the Purchaser, after a Sale by Auction.

I Hereby Acknowledge, That I have this day purchased by public auction all that (*describe the estate*) for the sum of ; and have paid into the hands of the sum of as a deposit and in part payment of the said purchase-money; and I hereby agree to pay the remaining sum of unto (*the vendor*) at on or before the day of ; and in all other respects, on my part, to fulfil the annexed conditions of sale.

Witness my hand this day of

(*Signatures.*) (*Seals.*)

(17.)

An Agreement to make an Assignment of a Lease.

Whereas, (*the lessor*) hath by his deed indented, dated , demised unto the said (*the lessee*) all that to have and to hold to him the said his (*reciting the lease*) as by the said deed indented more fully appears: Now the said for and in consideration of dollars, doth hereby for himself, (*his heirs, &c.*) covenant, that he the said before the day of shall and will, at the costs and charges of (*the assignee*), his (*heirs, &c.*) by deed indented, assure, assign, and grant over to the said his (*his heirs, &c.*) the said (*the premises*) and all his estate, right, title, and demand therein: To have and to hold to the said (*the assignee*) his (*heirs, &c.*) during the residue of the said term of years, then to come, of, in, and to the same, by virtue of the said recited indenture, and under the rents, covenants, and agreements therein specified.

(*Signatures.*) (*Seals.*)

(18.)

An Agreement for making a Quantity of Manufactured Articles.

Articles of Agreement, between (*the buyer*) of the one part, and of the other part.

The said (*the manufacturer*) for the consideration hereinafter mentioned, doth covenant that he will, at his own charge, make for the said (*describe the articles to be made*) of the same quality of materials and goodness, as, and in all other respects according to a pattern agreed between the said parties, , and deliver the same to the said at within months from the date hereof. And the said in consideration thereof, doth covenant to pay to the said at the rate of after months from the delivery of the said as aforesaid. And it is agreed, that if any of the said shall not be made agreeable to the said pattern, and for that reason shall be rejected by the said he the said shall take back such as shall so be refused, and deliver the said the like quantity of the goodness and make, according to the pattern aforesaid.

In Witness

(*Signatures.*) (*Seals.*)

(19.)

Agreement between a Trader and a Book-keeper.

Articles of Agreement between (*the trader*) of and (*the book-keeper*) of . The said agrees that he will, during the term of years from the date hereof, dwell with the said and faithfully keep the books of accounts of the said and diligently serve the said in such other business as the said shall direct, and shall therein perform the reasonable directions of the said without disclosing the same, or any of his correspondence, or the secrets of his employment or business to any person whatsoever; and shall not correspond with any person corresponding with the said , nor use any traffic or dealing for himself, or any other person, without the consent of the said in writing. And the said further covenants, that he will, during the said term, keep true and perfect accounts for the said , and will not embezzle, waste or destroy any of the goods, moneys, or effects of the said or any of his correspondents; and also that he the said will, from time to time, during the said term, upon request, make and give unto the said his a just and perfect account in writing of all money, which he the said shall receive and pay out, and of all goods and commodities, which he shall, at any time during the said term, receive in or deliver out upon the account of the said , or any of his correspondents, or by the order of the said . And also, that he the said his will pay to the said , his all such sums of money as shall be due upon the foot of every such account. And also that he the said will not deliver forth upon credit any of the goods, merchandise, or moneys, of the said or any of his correspondents, to any person or persons whatsoever, without the express consent of the said

And the said (*the trader*) for himself (*and his heirs, &c.*) covenants that he will pay to the said (*the book-keeper*) in consideration of the said services, the yearly sum of in equal payments on the days following, viz., on and will, during the said term, provide for the said sufficient and suitable meat, drink, washing, and lodging.

In Witness

(*Signatures.*) (*Seals.*)

(20.)

Agreement for Damages in laying out or altering Road.

Whereas, A road was laid out on the day of A.D. 19 , by and Commissioners of Highways of the Town of in the County of and State of on the application of the requisite number of legal voters residing within three miles of said road, as follows, commencing

which road passes through the land of being known and described as follows, viz.:

Now, therefore, it is hereby agreed between the said Commissioners and the said that the damages sustained by the said by reason of the laying out and opening said road upon his land, hereinbefore described, be liquidated and agreed upon at dollars.

In Witness Whereof, The said Commissioners and the said have hereunto subscribed their names this day of A. D. 19 .

(*Signatures.*) *Commissioners of Highways.*

(21.)

An Agreement between a Person who is Retiring from the Active Part of a Business, and another who is to Conduct the same for their Mutual Benefit.

Articles of Agreement, Made, entered into, and concluded upon, this day of A. D. , between of of the one part, and of of the other part: Whereas the said hath conducted and managed for some time past the trade or business of the said , and in consideration of the attention and assiduity of the said thereunto, the said is willing to continue the said in the management thereof under the covenants, restrictions, and agreements hereinafter contained; and in consequence thereof, an inventory and appraisement hath been made and taken of the stock, and entered in two receipt-books, one of which is to remain in the custody of each of them, the said parties to these presents, and is subscribed by both of them, and the value of the said stock in the whole, appears to the amount of the sum of : Now these presents witness, that for and in consideration of the covenants and agreements hereinafter contained on the part of the said to be performed, the said for himself, his executors, and administrators, doth hereby covenant, promise, and agree, to and with the said , that it shall and may be lawful to and for the said from time to time, during the term of years, to be computed from the day of the date of these presents, if they the said and shall jointly so long live, to trade with the said stock, and to manage and improve the same, in such manner as to the said under the direction of the said , shall seem meet, upon trust nevertheless, and to the intent and purpose that the said shall and do, by and out of the money which shall arise by sale of any part or parts of the said stock, buy such goods as shall be requisite to keep up and continue the present quality and value thereof, and by and out of the profits which shall arise from the trade and dealing, in the first place yearly and every year, pay the whole rent of the said house and shop, and pay and discharge all taxes which now are, or shall hereafter be, assessed or imposed on him the said or the said on account of the said house and trade, and in the next place to pay to him the said or his assigns, yearly and every year during the said term of years, if they the said and shall so long live, one clear annuity or yearly sum of by equal half-yearly payments, on the day of and the day of without any deduction or abatement whatsoever, and subject thereto, to retain the residue and overplus of the profits which shall arise from his trade and dealing, to and for his own sole use and benefit, as a recompense and satisfaction for his care and trouble in the sale and management of the said stock. And the said in consideration of the premises, and of the covenant and agreement hereinbefore on the part of the said contained, doth for himself, his executors, and administrators, covenant, declare, and agree, that he the said shall and will from time to time, and at all times, for and during the said term of years, if they the said and shall so long jointly live, diligently apply himself to the care and management of the said stock, trade, and business, according to his best skill, abilities, and discretion, and apply and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, to answer and discharge the trusts hereby reposed in him, in such manner as hereinbefore is directed, declared, or expressed. And also shall and will write true and perfect entries, in proper books of accounts, of all such goods as shall be sold, and of all moneys which shall be paid and received by him, and permit the same, from time to time, to be inspected by him the said or such other person or persons as he shall appoint. And further, that he the said shall not nor will, at any time during the continuance of the said term of years, buy or sell, or in anywise trade or deal in his own name, but in the name only of him the said upon the trusts aforesaid; nor do any act whatsoever, whereby the said stock, or any part thereof, may be attached, or taken in execution. And also that at Christmas next, and so at every succeeding Christmas during the said term of years, or oftener, if thereto required by the said , he the said shall and will take a full account in writing of the said stock, then remaining in the said trade, and of the profits thereof, and deliver the same to the said in order to manifest to him a true state thereof, and of his proceedings in the trade by him carried on therewith. And at the expiration, or other sooner determination, of the said term of years, he the said , his executors or administrators, shall and will deliver up to him the said , his executors or administrators, the stock then remaining for his or their own use and benefit, to the value of the sum of losses by bad debts, decay of goods, and other inevitable casualties excepted.

Witness our hands and seals, this day of in the year 19 .

In presence of

(*Signatures.*) (*Seals.*)

(22.)

A Brief Building Contract.

Contract for building made this day of one thousand nine hundred and by and between of in the County of and of in the County of Builder .

The said covenant and agrees to and with the said to make, erect, build, and finish, in a good, substantial, and workmanlike manner, upon situate said to be built agreeable to the draught, plans, explanations, or specifications, furnished, or to be furnished to said by of good and substantial materials; and to be finished complete on or before the day of . And said covenant and agrees to pay to said for the same dollars as follows:

Security against mechanics', or other lien, is to be furnished by said prior to payment by said

And for the performance of all and every the articles and agreements above mentioned, the said and do hereby bind themselves, their heirs, executors, and administrators, each to the other, in the penal sum of dollars, firmly by these presents.

In Witness Whereof, We, the said and have hereunto set our hands the day and year first above written.

(*Signatures.*) (*Seals.*)

Executed and Delivered in Presence of

Contracts for building are among those most frequently made, and also among those which require the utmost care. A specification stating and describing all the things which the parties desire and intend to have done should always accompany the contract. It is very difficult for persons not accustomed to the work to remember and specify, and properly describe, all the things they propose to have in the building; and all these things should be accurately and precisely stated in the specification. From omissions or errors of this kind, cases and questions are constantly arising. To assist those who have to prepare for themselves or others a contract of this sort, I have given, first, a brief and simple form; I now give a very full and minute form, prepared by a skillful lawyer, and in wide use.

(23.)

A Full and Minute Building Contract.

An Agreement, of two parts, made this day of in the year **one** thousand **nine** hundred and by and between part of the first part, and part of the second part.

The said part of the first part, in consideration of the sum of money to be paid by the said part of the second part, as hereinafter mentioned, and the covenants and agreements hereinafter recited, to be kept and performed by the said part of the second part, do for sel and **Covenant, Promise,** and **Agree,** to and with the said part of the second part, that the said part of the first part, shall and will, in a good and workmanlike manner, and according to the best of art and ability, do and perform the following work, and provide materials for the same, that is to say:

The whole of said work is to be performed, and all the said materials furnished in conformity with the plans and specifications of the same, as made by the ARCHITECT hereby appointed by said part of the second part, which plans and specifications bear even date herewith, and are signed by the parties hereto, and under the superintendence and direction of hereby appointed SUPERINTENDENT and AGENT of the said part of the second part, which plans and specifications are to be considered as forming a part of this agreement, as if herein fully written and drawn.

The said part of the first part further agree that the work aforesaid shall be commenced and be constantly prosecuted, and the materials aforesaid promptly furnished and that all said work shall be completed on or before the day of in the year one thousand **nine** hundred and and, furthermore, that no charge of any kind shall be made by the said part of the first part to the said part of the second part, beyond the sum of dollars, unless the said part of the second part, and the said Superintendents, shall alter the aforesaid plans and specifications, in which case the value of such alterations shall be added to the amount to be paid under this contract, or deducted therefrom, as the case may require: it being expressly understood that no extra work of any kind shall be performed, or extra materials furnished, by the said part of the first part, unless authorized by the said part of the second part, and the said Superintendents in writing; and that the said part of the second part, and the said Superintendents may, from time to time, make any alterations of, to, and in the said plans and specifications, upon the terms aforesaid.

The said part of the first part, for sel and legal representatives, further promise and agree that insurance shall be effected upon the building as soon as the roof is put on and covered; the amount of said insurance to be for such sum as the said part of the second part, and the said Superintendents shall direct, to be further increased, from time to time, at the direction of the said party of the second part, and the said Superintendents; the policy to be in the name and for the benefit of said part of the second part, or legal representatives, and to be made payable, in case of loss, to for whom it may concern;—each party to this agreement hereby agreeing to pay one-half the cost of such insurance.

The said part of the second part, for sel and legal representatives, in consideration of the materials being provided and the labor done as herein required, and all other of the stipulations, requirements, matters and things herein set forth, being kept and performed by said part of the first part, **Covenant, Promise,** and **Agree,** to and with the said part of the first part: that will well and truly pay, or cause to be paid, unto the said part of the first part, or legal representatives, the sum of dollars, in the manner following:—

It is agreed by and between the parties to this agreement, as follows:—

1st. That for each and every day's delay in the performance and completion of this agreement, or of any extra work under it, after the said day of in the year one thousand nine hundred and , there shall be allowed and paid by said part of the first part, to said part of the second part, or representatives, damages for such delay if the same shall arise from any act or default on the part of the said part of the first part.

2d. That the said part of the first part, or representatives, shall not be delayed in the constant progress of the work under this agreement, or any of the extra work under the same or connected therewith, by said party of the second part, or by his Superintendents or any other contractor employed by the said part of the second part, upon or about the premises; and for each and every day, if any, shall be so delayed, additional day to be allowed to complete the work aforesaid, from and after the day hereinbefore appointed for its entire completion, unless upon the contingency provided for below in the 5th article.

3d. That each and every person employed, by sub-contract or "piece work," by the said part of the first part, in the providing materials or performing labor or works in the fulfillment or execution of this agreement, shall be, in the opinion of the said Superintendents, a suitable, competent, and satisfactory person.

4th. That the said part of the first part shall and will engage and provide own cost and expense, during the progress of the works under, and until the completion and fulfillment of this agreement, a thoroughly competent "Foreman of the Works," whose duty it shall be to attend to the general supervision of all matters hereby undertaken by said part of the first part, and also to the correct and exact making, preparing, laying-out, and locating of all patterns, moulds, models, and measurements in, to, for, and upon the works hereby agreed upon, from and in conformity with the said plans and specifications, and according to the direction of said Architects.

5th. That if at any time during the progress of the work the said Superintendents shall find that said work is not carried forward with sufficient rapidity and thoroughness, or that the materials furnished, foreman of the works, sub-contractors or workmen employed by the part of the first part, are unsatisfactory, and insufficient for the completion of the work within the time and in the manner stipulated in the plans and specifications aforesaid, shall give notice of such insufficiency and defects in progress, materials, foreman, sub-contractors, or workmen, to the party of the first part; and if within three days thereinafter such insufficiency and defects are not remedied in a manner satisfactory to —the party of the second part, through the agency of said Superintendents, or otherwise, may enter upon the work, and suspend or discharge said party of the first part, and all employed under him, and carry on and complete the work, by "days work," or otherwise, as may elect, providing and substituting proper and sufficient materials and workmen; and the expense thereof shall be chargeable to the said party of the first part, and be deducted from any sum which may be due to him on a final settlement; and the opinion of said Superintendents shall be final, and their certificate in writing conclusive evidence between the parties hereto, on all questions and issues arising on or out of this fifth article of this Agreement, subject to the final decision of the referees hereinafter named.

6th. That the said part of the first part shall be solely responsible for any injury or damage sustained by any and all person or persons, or property, during or subsequent to the progress and completion of the works hereby agreed upon, from or by any act or default of the said part of the first part; and shall be responsible over the party of the second part for all costs and damages which said party of the second part may legally incur by reason of such injury or damage; and that the said part of the first part shall give all usual, requisite, and suitable notices to all parties whose estates or premises, being adjoining those upon which the works hereby agreed upon are to be done, may or shall be any way interested in or affected by the performance of said works.

7th. That the said part of the first part shall, from time to time, during the progress of said works, apply to the said Architects for all needful explanations of the true intent and meaning of the said plans and specifications; and that "working-plans" shall, at the expense of the said part of the second part, be from time to time, and whenever requisite, furnished by the said Architects to the said part of the first part, upon reasonable notice being given to the said Architects that the same are requisite and needful; and further, that the said part of the first part will not and shall not, in the execution, performance, and fulfillment of this agreement, in any way deviate from the entire and exact compliance with, adherence to, and fulfillment of the said plans, "working-plans," and specifications, by reason of any practical difficulty which, in opinion, may or shall arise or occur; unless some such deviation shall, in the opinion and by the certificate of the said Architects, become absolutely necessary and unavoidable, in which case said part of the first part to make such deviation as they may be directed by said Architects.

And Whereas it is the intention of the parties hereto, that the said part of the first part shall bear and pay all the expenses necessary for and incident to the carrying into full and entire execution and completion all the works contemplated in this agreement, it is further understood and agreed by and between the parties to this agreement, that in case any lien or liens for labor or materials shall exist upon the property or estate of the said part of the second part, at the time or times when by the foregoing terms or provisions of this agreement a payment is to be made by the said part of the second part to the said part of the first part, such payment, or such part thereof as shall be equal to not less than double the amount for which such lien or liens shall or can exist, shall not be payable at the said stipulated time or times, notwithstanding anything to the contrary in this agreement contained; and that the said part of the second part may and shall be well assured that no such liens do or can attach or exist before shall be liable to make either of the said payments.

It is expressly understood by the part of the first part, that all the works described or referred to in the annexed specifications are to be executed by the said part of the first part, whether or not the said works are illustrated by the aforesaid plans or working-drawings; and that said part of the first part to execute all works shown by the aforesaid plans and working-drawings, whether or not said works are described or referred to in the said specifications.

If any apparent discrepancy shall be found to exist between the plans working-drawings, and the specifications, the decision as to the fair construction of said discrepancy, and of the true intent and meaning of the plans, working-drawings, and specifications, shall be made by the Architects hereinbefore named; and said part of the first part shall provide and execute the said works in accordance with said decision,—with the right of a final decision by the referees hereinafter named,—as a part of the original works undertaken by said part of the first part.

And Further agreed by the parties hereto to submit, and hereby do submit, each, all, and every demand between them hereinafter arising, if any, concerning the value of any changes of, or omissions in, or additions to, the aforementioned plans or specifications, or concerning the manner of performing or completing the work, or the time or amount of any payment to be made under this agreement, or the quantity or quality of the labor or materials, or both, to be done, furnished, or provided under this agreement, or any other cause or matter touching the work, the materials, or the damages contemplated, set forth, or referred to, in or by this agreement, or concerning the construction of this agreement, to the determination of the award of whom, or the award of a majority of whom being made and reported within year from the time hereinbefore fixed upon for the final completion of this agreement, to the Superior Court for the County of , the judgment thereof shall be final; and if either of the parties shall neglect to appear before the Arbitrator, after due notice given of the time and place appointed for hearing the parties, the Arbitrator may proceed in absence.

In Witness Whereof, The parties aforesaid have interchangeably set their hands and seals the day and year first above written, to this and other instrument of like tenor and date.

(*Signatures.*) (*Seals.*)

Executed and Delivered in Presence of

CHAPTER VII.

CONSIDERATION.

SECTION I.

THE NEED OF A CONSIDERATION.

It is an ancient and well-established rule of the common law prevailing in this country, that no promise can be enforced at law unless it rests upon a *consideration;* by which word is meant a cause or reason for the promise. If it do not, it is called *a naked bargain*, and the promisor, even if he admits his promise, is under no legal obligation to perform a promise that he made without a *consideration.*

There are two exceptions to this rule. One is when the promise is made by a sealed instrument, or deed (every written instrument which is sealed is a deed). Here the law is said to imply a consideration; the meaning of which is that it does not require that any consideration should be proved. The seal itself is said to be a consideration, or to import a consideration.

The second exception relates to negotiable paper; and is an instance in which the law-merchant has materially qualified the common law. We shall speak more fully of this exception when we treat of negotiable paper.

The word "consideration," as it is used in this rule, has a peculiar and technical meaning. It denotes some *substantial* cause for the promise. This cause must be one of two things; either a benefit to the promisor, or else an injury or loss to the promisee sustained by him at the instance and request of the promisor. Thus, if A promises B to pay him a thousand dollars in three months, and even promises this in writing, the promise is worthless in law, if A makes it as a merely voluntary promise, without a consideration. But if B, or anybody for him, gives to A to-day a thousand dollars in goods or money, and this was the ground and cause of the promise, then it is enforceable. And if A got nothing for his promise, but B, at the request of A, gave the same goods or money to C, this would be an equally good consideration, and the promise to pay B would be equally valid in law.

This requirement of a consideration sometimes operates harshly and unjustly, and permits promisors to break their word under circumstances calling strongly for its fulfilment. Courts have been led, perhaps, by this, to say that the consideration is sufficient if it be a substantial one, although it be not an adequate one. This is the unquestionable rule now, and it is sometimes carried very far. In one case an American court refused to inquire into the *adequacy* of the consideration,—or whether it was *equal* to the promise *made* upon it,—and said, if there was the *smallest spark* of consideration, it was enough, if the contract was fairly made with a full understanding of all the material facts. Still, there must be some consideration.

SECTION II.

WHAT IS A SUFFICIENT CONSIDERATION.

THE law detests litigation; at least courts say so; and therefore they consider anything a sufficient consideration which arrests and suspends or terminates litigation. Thus the compromise, or forbearance, or mutual reference to arbitration, or any similar settlement, of a suit, or of a claim, is a good consideration for a promise founded upon it. And it is no defense to a suit on this promise, to show that the claim or suit thus disposed of would probably have been found to have no foundation or substance. If there be an honest claim, which he who advances it believes to be well grounded, and which within a rational possibility may be so, this is enough; the court will not go on and try the validity of the claim or of the suit in order to test the validity of a promise which rests upon its settlement; for the very purpose for which it favors this settlement is the avoidance of all necessity of investigating the claim by litigation. But for reasons of public policy, no promise can be enforced of which the consideration was the discontinuance of criminal proceedings; or any conduct by which public interests are harmed, as, for example, the procurement of the passage of a law by corrupt means.

If any work or service is rendered to one, or for one, and he requested the same, it is a good consideration for a promise of payment; and if he makes no promise, the law will imply the promise, that is, will suppose that he has made it, and will not permit him to deny it. The rule is the same as to payment for goods, or property of any kind, delivered to any one at his request.

No person can make another his debtor against that other's will, by a voluntary offer of work, or service, or money, or goods. But if that other accept what is thus offered, and retain the benefit of it, the law will, generally, imply or presume that it was offered at the request of that other party, and will also imply his promise to pay for it, and will enforce the promise; unless it is apparent, or is shown, that it was offered and received as a mere gift.

A promise is a good consideration for a promise; and it is one which frequently occurs in fact.

If A says to B, "If you will deliver goods to C, I will pay for them," although there is no obligation upon B to deliver the goods, if he does deliver them, he furnishes a consideration for the agreement, and may enforce it against A.

An agreement by two or more parties to refer disputes or claims between them to arbitration, is not binding upon any of the parties unless all have entered into it.

The principle, that a promise is a good consideration for a promise, has been sometimes applied to subscription-papers; all who sign them being held on the ground that the promise of each is a good consideration for the promises of the rest. The law on the subject of these subscription-papers, and of all voluntary promises of contribution, is substantially this: no such promises are binding, unless something is paid for them, or unless some party for whose benefit they are made,—and this party may be one or more of the subscribers,—at the request, express or implied, of the promisor, and on the faith of the subscriptions, incurs actual expense or loss, or enters into valid contracts with other parties which will occasion expense or loss. As the objection to these promises or the doubt about them, comes from the want of consideration, it may be cured by a seal to each name, or by one seal which is declared in the instrument to be the seal of each.

It is to be regretted that the law does not regard a merely moral consideration as a sufficient legal consideration; but so it is. Thus, it has been held in this country, that a note given by a father to a party who had given needful medicines, food, and shelter to his sick son, who was of full age, was void in law, because there was no legal consideration. And the same doctrine was applied where a son made a similar promise for food and support to his aged father. If, in either case, the promise had been made *before* the food or other articles were supplied, or even a request made *before* the supply, then the supply of the food and support would have been a good consideration. But they had all been supplied before any request or promise, and nothing was left but the moral obligation of a father to compensate one who had supported his son, or of a son to support his father; and this the law does not deem sufficient to make even an express promise enforceable at law.

SECTION III.

AN ILLEGAL CONSIDERATION.

If the whole of a consideration, or if any part of the consideration of an entire and indivisible promise, be illegal, the promise founded upon it is void. Thus, where a note was given in part for the compounding of penalties and suppressing of criminal prosecutions, it was held to be wholly void and uncollectible. And where a part of the consideration of a note was spirituous liquors, sold by the payee in violation of a Statute, such note was held to be wholly void. But if the consideration consists of separable parts, and the promise consists of corresponding separable parts, which can be apportioned and applied, part to part, then each illegality will affect only the promise resting on it; for in fact there are many considerations and many promises.

If the consideration be entire and wholly legal, and the promise consists of separable parts, one legal and the other illegal, the promisee can enforce that part which is legal.

SECTION IV.

AN IMPOSSIBLE CONSIDERATION.

No contract or promise can be enforced by him who knew that the performance of it was wholly impossible; and therefore a consideration which is obviously and certainly impossible is not sufficient in law to sustain a promise. But if one makes a promise, he cannot always defend himself when sued for non-performance by showing that performance was impossible; for it may be his own fault, or his personal misfortune, that he cannot perform it. He had no right to make such a promise, and must answer in damages; or if he had a right to make it in the expectation of performance, and this has become impossible subsequently,—as by loss of property, for example,—this is his misfortune, and no answer to a suit on the promise. There are, however, obviously, promises or contracts, which, from their very nature, must be construed as if the promisor had said, "I will do so and so, if I can." For example, if A promises to work for B one year, at $20 a month, and at the end of six months is wholly disabled by sickness, he is not liable to an action by B for breach of his contract; and he can recover his pay for the time that he has spent in B's service. A mere want of money, which makes a pecuniary impossibility, is not regarded by the law as a legal impossibility.

SECTION V.

FAILURE OF CONSIDERATION.

IF a promise be made upon a consideration which is apparently valuable and sufficient, but which turns out to be nothing; or if the consideration was originally good, but becomes wholly valueless before part performance on either side, there is an end of the contract, and the promise cannot be enforced. And if money were paid on such a consideration, it can be recovered back, but only the sum paid can be recovered without any increase or addition as compensation for the plaintiff's loss and disappointment, unless there were fraud or oppression.

If the failure of consideration be partial only, leaving a substantial, though far less valuable, consideration behind, this may still be a sufficient foundation for the promise, if that be entire. The promisor may then be sued on the promise; but he will then be entitled, by deduction, set-off, or in some other proper way, to due allowance or indemnity for whatever loss he may sustain as to the other parts of the bargain, or as to the whole transaction, from the partial failure of the consideration. Thus, if he promised so much money for work done in such a way, or as the price of a thing to be made and sold to him, if no work is done, or the thing is not made or sold, there is an end of the promise, because the consideration has failed. But if the work was done, but not as it should have been, or the thing made and sold, but not what it should have been, and the promisor accepted the work or the thing, he may now show that the consideration for his promise has partially failed, and may have a proportionate reduction in his promise, or in the amount he must pay. And if the promise be itself separable into parts, and a distinct part or proportion of the consideration failed, to which part some distinct part or proportion of the promise could be applied, that part of the promise cannot be enforced, although the residue of the promise may be.

If A agrees with B to work for him one year, or any stated time, for so much a month, or so much for the whole time, and, after working a part of the time, leaves B without good cause, it is the ancient and still prevailing rule, that A can recover nothing in any form or way. It has, however, been held in New Hampshire, that A can still recover whatever his services are worth, B having the right to set off or deduct the amount of any damage he may have sustained from A's breach of the contract. This view seems just and reasonable, although it has not been supported by adjudication in other States. If A agrees to sell to B five hundred barrels of flour at a certain price, and, after delivering one-half, refuses to deliver any more, B can certainly return that half, and pay A nothing. But if B chooses to retain that half, or if he has so disposed of or lost it that he cannot return it, he must pay what it is worth, deducting all that he loses by the breach of the contract. And this case we think analogous to that of a broken contract of service; but B's liability to pay, even in the case supposed as to goods, has been denied by some courts.

A difficulty sometimes arises where A, at the request of B, undertakes to do something for B, for which he is to be paid a certain price; and in doing it he departs materially from the directions of B and from his own undertaking. What are now the rights of the parties? This question arises most frequently in building contracts, in which there is usually some departure from the original undertaking. The general rules are these: If B assent to the alteration, it is the same thing as if it were a part of the original contract. He may assent expressly, by word or in writing; or constructively, by seeing the work, and approving it as it goes on, or being silent; for silence under such circumstances would generally be equivalent to an approval. But if the change be one which B had a right, either from the nature of the change, or the appearance of it, or A's language respecting it, to suppose would add nothing to the cost, then no promise to pay an increased price would be inferred from either an express or tacit approval. Generally, as we have seen, if A does or makes what B did not order or request, B can refuse to accept it, and, if he refuses, will not then be held to pay for it. But if he accepts it, he must pay for it. This consequence results, however, only from a voluntary acceptance. For if A choose, without any request from B, to add something to B's house, or make some alteration in it, which being done cannot be undone or taken away without detriment to the house, B may hold it, and yet not be liable to pay for it; and A has no right to take it away, unless he can do so without inflicting any injury whatever on B. This rule would apply whether the addition or alteration were larger or smaller.

It is sometimes provided in building contracts that B shall pay for no alteration or addition, unless previously ordered by him in writing. But if there be such provision, B would be liable for any alteration or addition he ordered in any way, or voluntarily accepted after it was made, when he could have rejected it.

So it is sometimes agreed that any additions or alterations shall be paid for at the same rate as the work contracted for. The law would imply this agreement if the parties did not make it expressly.

CHAPTER VIII.

BONDS.

A BARGAIN where both parties make promises, and come under obligations, each to the other, may be made without seal, and would then be called an Agreement. If made under seal, it would generally be in the form of, and bear the name of, an Indenture. If a promise by one only, is made in writing, without a seal, it is a simple promise; but if it be made with a seal, then it would generally be in the form of, and bear the name of, a BOND.

The essentials of a bond are only that one party should acknowledge himself "held, bound, and obliged" unto another party, to pay to him a sum of money; and neither of the words "held," or "bound," or "obliged," are strictly necessary, although usual and proper: other words of the same meaning will have the same effect. In such a bond, the party bound is called the *obligor*, and the party to whom he is bound is called the *obligee.* The sum for which the obligor is bound is called the penal sum, or the *penalty.* Such a bond is simply an obligation to pay so much money. But a bond is not often given only for this purpose. It is usually intended to be, in fact, an obligation to do something else, *on the penalty* of paying so much money if it be not done. This something else may be anything whatever which the obligor may contract to do. All this is contained in an addition, which is written on the same paper immediately after the bond itself; that is, after the words of obligation. And this is called the "Condition" of the bond. It begins with saying, This bond is on the condition following; and then recites the things which the obligor has undertaken to do; and then adds, that if all these things are fully done and performed, then the bond shall be void and of no effect, and otherwise shall remain in full force.

The meaning and effect of all this is, that if the obligor fails, in any respect, to do what the condition recites, then he is bound to pay the money he acknowledges himself, in the bond, bound to pay. But now the law comes in to mitigate the severity of this contract. And whatever be the sum which the obligor acknowledges himself, in the bond, bound to pay, he is held by the courts to pay to the obligee only that amount which will be a complete indemnification to him for the damage he has sustained by the failure of the obligor to do what the condition recites.

For example: suppose A B makes a bond to C D, acknowledging himself bound to C D in the sum of ten thousand dollars. The condition recites that one E F has been hired by C D as his clerk, and that A B guarantees the good conduct of E F; and if E F does all his duty honestly and faithfully, then the bond is void, and otherwise remains in full force. Then suppose E F to cheat C D out of some money. A B is sued on the bond; C D cannot recover from him, in any event, *more* than the ten thousand dollars; and he will in fact recover from him only so much of this as will make good to C D all the loss he has sustained by E F's misconduct. As the obligee can recover from the obligor only actual compensation for what he loses, it is usual, in practice, to make the penal sum in the bond large enough to cover all the loss that can happen.

There need be no "consideration," alleged or asserted in the bond, or proved, because, in the language of the law, the seal is (or implies) a consideration.

The following forms are those of bonds frequently given; and it will be easy to frame from some one of them any bond that is wanted for other purposes.

(25.)

A Simple Bond, without Condition.

Know all Men by these Presents, That I (*the obligor*) am held and firmly bound unto (*the obligee*) in the sum of lawful money of the United States of America, to be paid to the said or his certain attorney, or assigns: to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

In Testimony Whereof, I have set my hand and seal to this instrument, on the day of , in the year of our Lord nineteen hundred and

(*Witnesses.*) (*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

(26.)

Bond for Payment of Money, with a Condition to that Effect, with Power of Attorney to confess Judgment annexed.

Know all Men by these Presents, That held and firmly bound unto in the sum of lawful money of the United States of America, to be paid to the said or his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, heirs, executors, and administrators, firmly by these presents. Sealed with seal Dated the day of in the year of our Lord one thousand nine hundred and

The Condition of this Obligation is such, That if the above bounden heirs, executors, administrators, or any of them shall and do well and truly pay, or cause to be paid, unto the above-named certain attorney, executors, administrators, or assigns, the just sum of dollars, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

To *, Esq., Attorney of the Court of Common Pleas, at in the County of , in the State of , or to any other Attorney of the said Court, or of any other Court, there or elsewhere.*

Whereas, (*the obligor*) in and by a certain obligation bearing even date herewith, do stand bound unto (*the obligee*) in the sum of lawful money of the United States of America, conditioned for the payment of

These are to desire and authorize you, or any of you, to appear for heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought, or to be brought, against me, or my heirs, executors, or administrators, at the suit of the said (*the obligee*) executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, or my heirs, executors, or administrators, for the sum of lawful money of the United States of America, debt, besides costs of suit, in such manner as to you shall seem meet: and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, and for my heirs, executors, and administrators, remise, release, and forever quit claim unto the said (*the obligee*) or his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, have hereunto set hand and seal , the day of , in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

(27.)

Bond for Conveyance of a Parcel of Land.

Know all Men by these Presents, That we, as principals, and as sureties, are holden and stand firmly bound unto in the sum of dollars, to the payment of which to the said or executors, administrators, or assigns, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The Condition of this obligation is such that whereas the said obligors have agreed to sell and convey unto the said obligee a certain parcel of real estate situated and bounded as follows, namely:

The same to be conveyed by a good and sufficient (*warranty or other*) deed of the said obligors, conveying a good and clear title to the same, free from all incumbrances.

And whereas, for such deed and conveyance it is agreed that the said obligee shall pay the sum of dollars, of which dollars are to be paid in cash upon the delivery of said deed, and the remainder by the note of the said obligee, bearing interest at per cent. per annum, payable semi-annually, and secured by a mortgage in the usual form upon the said premises, such note to be (*describe the note*)

Now, therefore, if the said obligors shall upon tender by the said obligee of the aforesaid cash, note , and mortgage at any time within from this date, deliver unto the said obligee a good and sufficient deed as aforesaid, then this obligation shall be void, otherwise it shall be and remain in full force and virtue.

In Witness Whereof, We hereunto set our hands and seals this day of A.D. 19 .

Signed and Sealed in Presence of

(28.)

Bond for a Deed of Land, with Acknowledgment before Notary Public.

Know all Men by these Presents, That of the County of and State of held and firmly bound to of in the sum of dollars, to be paid to said his executors, administrators, or assigns, to the payment whereof bind sel heirs, executors, and administrators, firmly by these presents, sealed with seal, and dated the day of A.D. 19 .

The Condition of this Obligation is, That if the said upon payment of dollars, and interest, by said within years from this date, agreeably to note of even date herewith, shall convey to said and heirs forever, a certain tract of land, situated in the County of and State of to wit:

by a deed in common form duly executed and acknowledged, and in the meantime shall permit said to occupy and improve said premises for own use, then this obligation shall be void, otherwise to remain in full force and effect.

In Testimony Whereof, have hereunto set hand and seal , the day and year first above written.

(*Signature.*) (*Seal.*)

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on this day of nineteen hundred and , before me, the undersigned, Notary Public in and for said County and State, duly commissioned and qualified, came , who is known to me to be the same person whose name subscribed to the foregoing instrument of writing, as party thereto, and acknowledged the same to be act and deed for the purpose therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City of , the day and year last aforesaid.

Notary Public.

(29.)

Bond in another Form, for Conveyance of Land, with Acknowledgment.

Know all Men by these Presents, That of in the County of and State of held and firmly bound unto of in the County of and State of in the penal sum of dollars, for the payment of which sum, well and truly to be made to heirs, executors, and administrators, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated this day of A.D. 19 .

The Condition of the above Obligation is such, That whereas the said this day has given the said promissory note of even date herewith

Now, if, on payment of the said note being made on or before the time shall become due, and all taxes on the land hereinafter described having been paid by the said and no right of pre-emption having been established or claimed on the said land, or any part thereof, the said or his legal representatives, shall, whenever thereunto afterwards requested, execute and deliver to the said or legal representatives, a good and sufficient deed, conveying to the *(here describe the land)* free and clear of all incumbrance then this obligation to be null and void, otherwise of full force and effect, it being distinctly understood and agreed by and between the parties hereto that the time of payment herein above fixed material and of the essence of this contract, and that in case of failure therein, the intervention of equity is forever barred.

(Signatures (Seals.)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY OF }

I, in and for the said county, in the State aforesaid, do hereby certify that personally known to me as the same person whose name subscribed to the above bond for deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said bond as free and voluntary act, and for the use and purpose therein set forth.

Given under my hand and seal, this day of A. D. 19 .

Notary Public.

(30.)

Bond to Corporation for Payment of Money due for Contribution to Capital Stock, with Power of Attorney to confess Judgment.

Know all Men by these Presents, That held and firmly bound unto *(name of the corporation)* in the sum of lawful money of the United States of America, to be paid to aforesaid, their certain attorney, successors or assigns. To which payment well and truly to be made, firmly by these presents. Sealed with seal . Dated the day of in the year of our Lord one thousand nine hundred and

The Condition of this Obligation is such, That if the above bounden heirs, executors, and administrators, or any of them, shall and do well and truly pay, or cause to be paid unto the above-named their certain attorney, successors or assigns, the just sum of such as abovesaid, at any time within years from the date hereof, together with lawful interest for the same, in like money, payable monthly, on the of each and every month hereafter, and shall also well and truly pay, or cause to be paid unto aforesaid, their successors or assigns, the sum of dollars, on the said of each and every month hereafter, as and for the monthly contribution on share of the capital stock of aforesaid now owned by the said without any fraud or further delay; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of the said principal money when due, or of the said interest, or the monthly contribution on said stock, for the space of after any payment thereof shall fall due, then and in such case, the whole principal debt aforesaid shall, at the option of aforesaid, their successors and assigns, immediately thereupon become due, payable, and recoverable, and payment of said principal sum and all interest thereon, as well as any contribution on said share of stock then due, may be enforced and recovered at once, anything hereinbefore contained to the contrary thereof notwithstanding. And the said for heirs, executors, administrators, and assigns, hereby expressly waive and relinquish unto aforesaid, their successors and assigns, all benefit that may accrue to by virtue of any and every law, made or to be made, to exempt the premises described in the indenture of mortgage herewith given, or of any other premises whatever, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof, then the above obligation to be void, or else to be and remain in full force and virtue.

(*Signatures.*) (*Seals.*)

Executed and Delivered in Presence of

To Esquire, Attorney of the Court of Common Pleas at in the County of in the State of or to any other Attorney, or to the Prothonotary of the said Court, or of any other Court, there or elsewhere.

Whereas, in and by a certain obligation, bearing even date herewith, do stand bound unto in the sum of lawful money of the United States of America, conditioned for the payment of the just sum of such as abovesaid, at any time within years from the date thereof, together with lawful interest for the same in like money, payable monthly, on the of each and every month thereafter, and should also well and truly pay or cause to be paid unto aforesaid, their successors or assigns, the sum of dollars, on the of each and every month thereafter, as and for the monthly contribution on share of the capital stock of aforesaid, now owned by the said without any fraud or further delay; provided, however, and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or the monthly contribution on said stock, for the space of after any payment thereof should fall due, then and in such case the whole principal debt aforesaid should at the option of aforesaid, their successors and assigns, immediately thereupon become due, payable, and recoverable, and payment of said principal sum, and all interest thereon, as well as any contribution on said share of stock then due, might be enforced and recovered at once, anything thereinbefore contained to the contrary thereof notwithstanding. And the said heirs, executors, administrators, and assigns thereby expressly waive and relinquish unto aforesaid, their successors and assigns, all benefit that might accrue to by virtue of any and every law, made or to be made, to exempt the premises described in the indenture of mortgage therewith given, or of any other premises whatever, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof. These are to desire and authorize you, or any of you, to appear for heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought or to be brought, against heirs, executors, or administrators, at the suit of aforesaid. their successors or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time, there or elsewhere to be held, and confess or enter judgment thereupon against heirs, executors, or administrators, for the sum of lawful money of the United States of America, debt, besides cost of suit, in such manner as to you shall seem meet; and for your or any of your so doing this shall be your sufficient warrant. And heirs, executors, and administrators, remise, release, and forever quit claim, unto aforesaid, their certain attorney, successors, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, have hereunto set hand and seal the day of in the year of our Lord one thousand nine hundred and

(*Signatures.*) (*Seals.*)

Sealed and Delivered in Presence of

CHAPTER IX.

ASSIGNMENTS.

THE word "assign" usually occurs in almost all forms of transfer and conveyance; but there are certain instruments to which the name of "Assignment" is more particularly given.

They are instruments by which other instruments or debts or obligations, as bonds, judgments, wages, and the like, are transferred. Sometimes they are written on the backs of, or elsewhere on the same paper with, the instruments to be transferred by the assignment. Some of these, as assignments of deeds of grant and conveyance, of mortgages, of leases, will be given in the chapters which treat of those topics. Here are given such forms as will enable one to make an assignment for any of the purposes for which assignments are usually made.

(31.)

Brief Form of an Assignment to be indorsed on a Note, or any Similar Promise or Agreement.

I Hereby, for value received, assign and transfer the within written (*or the above written*) , together with all my interest in and all my rights under the same, to (*name of the Assignee*).

(*Signature.*)

(32.)

A General Assignment, with Power of Attorney.

Know all Men by these Presents, That I for value received, have sold, and by these presents do grant, assign, and convey unto (*name of the assignee and description of the things assigned.*)

To Have and to Hold the same unto the said executors, administrators, and assigns forever, to and for the use of hereby constituting and appointing my true and lawful attorney irrevocable in my name, place, and stead, for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover, and receive all such sum and sums of money which now are, or may hereafter become due, owing and payable for or on account of all or any of the accounts, dues, debts, and demands above assigned giving and granting unto the said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary, as fully, to all intents and purposes, as might or could do, if personally present with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or substitute shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal the day of , one thousand nine hundred and

(*Signature.*) (*Seal.*)

Executed and Delivered in the Presence of

(33.)

Assignment of a Bond.

Know all Men by these Presents, That in the hereunto annexed obligation named, for and in consideration of the sum of lawful money of the United States of America, unto well and truly paid by at the time of the execution hereof, the receipt whereof hereby acknowledge, have assigned, transferred, and set over, and by these presents, do assign, transfer, and set over unto the said (*assignee*) his executors, administrators, and assigns, to and for his and their only proper use and behoof, the said hereunto annexed obligation, which is given and executed by to bearing date the day of Anno Domini 19 , to secure the payment of the sum of with lawful interest therein expressed, and all moneys, both principal and interest, thereon due and payable, or hereafter to grow due and payable, with the warrant of attorney to the said obligation annexed: together with all rights, remedies, incidents, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and all right, title, and interest therein.

In Witness Whereof, the said have hereunto set hand and seal , this day of Anno Domini one thousand nine hundred and

Sealed and Delivered in the Presence of us,

(34.)

Assignment of a Bond, with Power of Attorney, and a Covenant.

Know all Men by these Presents, That of the first part, for and in consideration of the sum of lawful money of the United States of America, to in hand paid by of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha bargained, sold, and assigned, and by these presents do bargain, sell, and assign, unto the said party of the second part, executors, administrators, and assigns, a certain written bond or obligation and conditions thereof, bearing date the day of one thousand nine hundred and executed by

and all sum and sums of money due, and to grow due thereon: and the said party of the first part do covenant with the said party of the second part, that there is now due on the said bond or obligation, according to the conditions thereof, for principal and interest, the sum of and do hereby authorize the said party of the second part, in name to ask, demand, sue for, recover, receive, and enjoy, the money due and that may grow due thereon, as aforesaid.

In Witness Whereof, have hereunto set hand and seal the day of one thousand nine hundred and

Sealed and Delivered in the Presence of

(35.)

Assignment of a Judgment in the Form of an Indenture.

This Indenture, Made the day of one thousand nine hundred and between (*assignor*) of the first part, and (*assignee*) of the second part.

Whereas, The said part of the first part one thousand nine hundred and recovered by judgment in the (*name of court*) against one the sum of

Now this Indenture Witnesseth, That the said part of the first part, in consideration of to duly paid, ha sold and by these presents do assign, transfer, and set over unto the said part of the second part, and assigns, the said judgment, and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And the said part of the first part, do hereby constitute and appoint the said part of the second part, and assigns, true and lawful attorney, irrevocable, with power of substitution and revocation for the use, and at the proper costs and charges of the said part of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction, or discharge the same. And attorneys one or more under for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that said attorney or substitute shall lawfully do in the premises. And the said part of the first part do covenant, that there is now due on the said judgment the sum of and that will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said part of the second part saving the said part of first part, harmless of and from any costs in the premises.

In Testimony Whereof, The part of the first part, ha hereunto set hand and seal the day and year first above written.

(*Seals.*)

Sealed and Delivered in the Presence of

(36.)

Assignment of Wages, with Power of Attorney.

Know all Men by these Presents, That I of in the County of in consideration of to me paid by of the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said all claims and demands which I now have, and all which, at any time between the date hereof and the day of next, I may and shall have against for all sums of money due, and for all sums of money and demand which, at any time between the date hereof and the said day of next, may and shall become due to me, for services as to have and to hold the same to the said his executors, administrators, and assigns forever.

And I, do hereby constitute and appoint the said and his assigns to be my attorney irrevocable in the premises, to do and perform all acts, matters, and things touching the premises, in the like manner to all intents and purposes as I could if personally present.

In Witness Whereof, I have set my hand and seal, this day of 19 .

(*Seal.*)

Signed, Sealed, and Delivered in Presence of

CHAPTER X.

SALES OF PERSONAL PROPERTY.

SECTION I.

WHAT CONSTITUTES A SALE.

It is important to distinguish carefully between a sale and an agreement for a future sale. This distinction is sometimes overlooked; and hence the phrase "an executory contract of sale," that is, a contract of sale which is to be executed hereafter, has come into use; but it is not quite accurate to speak of this as if it were a sale. Every actual sale is an executed contract, although payment or delivery may remain to be made. There may be an executory contract *for* sale, or a bargain that a future sale shall be made; but such a bargain is not a present sale; nor does it confer upon either party the rights or the obligations which grow out of the contract of sale.

A sale of goods is the exchange thereof for money. More precisely, it is the transfer of the property in goods from a seller to a buyer, for a price paid, or to be paid, in money. It differs from an exchange, in law; for that is the transfer of chattels for other chattels; while a sale is the transfer of chattels for money, which is the representative of all value.

Here we must pause to speak of the *legal* meaning of the word "property." It is seldom or never used in the law as it is in common conversation, to mean the things themselves which are bought, or sold, or owned. Because in law it means the *ownership* of the things, and not the things themselves.

If a bargain transfers the property in (which means the ownership of) the thing to another person for a price, it is a sale; and if it does not transfer the property, it is not a sale; and, on the other hand, if it be not a sale, it does not transfer the property. As soon as a thing is *sold* the buyer *owns* it, wherever it may be. And to constitute a sale at common law, all that is necessary is the agreement of competent parties that the property in (or ownership of) the subject-matter shall then pass from the seller to the buyer for a fixed price.

The sale is made when the agreement is made. The completion of the sale does not depend upon the delivery of the goods by the seller, nor upon the payment of the price by the buyer. By the mutual assent of the parties to the terms of the sale, the buyer acquires at once the property and all the rights and liabilities of property; so that, in case of any loss or depreciation of the articles purchased, the buyer will be the sufferer; and he will be the gainer by any increase in their value.

It is, however, a presumption of the law, that the sale is to be immediately followed by payment and delivery, unless otherwise agreed upon by the parties. If, therefore, nothing appears but a proposal and an acceptance, and the vendee departs without paying or tendering the price, the vendor may elect to consider it no sale, and may, therefore, if the buyer comes at a later period and offers the price and demands the goods, refuse to let him have them. But a credit may be agreed on expressly, and the seller will be bound by it; and so he will be if the credit is inferred or implied from usage or from the circumstances of the case. And if there be a delivery and acceptance of the goods, or a receipt by the seller of earnest, or of part payment, the legal inference is that both parties agree to hold themselves mutually bound by the bargain. Then the buyer has either the credit agreed upon, or such credit as from custom or the nature or circumstances of the case is reasonable. But neither delivery, nor earnest, nor part-payment, is essential to the completion of a contract of sale. They only prevent the seller from rescinding the contract of sale without the consent of the purchaser. Their effect upon sales under the provisions of the Statute of Frauds will be considered in the chapter on that subject. It may also be said that no one can be made to buy of another without his own assent. Thus, if A sends an order to B for goods, and C sends the goods, he cannot sue for the price, if A repudiates the sale, although C had bought B's business.

The seller (if no delivery with credit for the price is agreed on) has a right to retain possession of the property sold until the price is paid. This right is called a *lien*, which means the right of retaining possession of property until some charge upon it, or some claim on account of it, is satisfied. It rests, therefore, on possession. Hence the seller (and every other person who has a lien) loses it by voluntarily parting with the possession, or by a delivery of the goods. And it is a delivery for this purpose, if he delivers a part without any purpose of severing that part from the remainder; or if he make a symbolical delivery which vests this right and power of possession in the buyer, as by the delivery of the key of a warehouse in which they are locked up.

If the seller delivers the goods to the buyer, as he thereby loses his lien, he cannot afterwards, by virtue of this lien, retake the goods and hold them. But if the delivery was made with an express agreement that non-payment of the price should revest the property in the seller, this agreement may be valid, and the seller can reclaim the goods from the buyer if the price be not paid.

If the buyer neglect or refuse to take the goods and pay the price within a reasonable time, the seller may resell them on notice to the buyer, and look to him for the deficiency by way of damages for the breach of the contract. The seller, in making such resale, acts as agent or trustee for the buyer; and his proceedings will be regulated and governed by the rules usually applicable to persons acting in those capacities; and the principal one of these is, that he will be held to due care and diligence, and to perfect good faith.

Certain consequences flow from the rules and principles already stated which should be noticed. Thus, if the party to whom the offer of sale is made accepts the offer, but still refuses or neglects to pay the price, and there are no circumstances indicating a credit, or otherwise justifying the refusal or neglect, the seller may, as we have said, disregard the acceptance of his offer, and consider the contract as never made, or as rescinded. It would, however, be proper and prudent on the part of the seller expressly to demand payment of the price before he treated the sale as null; and a refusal or neglect would then give him at once a right to hold and treat the goods as his own. So, too, if the seller unreasonably neglected or refused to deliver the goods sold, and especially if he refused to deliver them, the buyer thereby acquires the right to consider that no sale was made, or that it has been avoided (or annulled). But neither party is bound to exercise the right thus acquired by the refusal or neglect of the other, but may consider the sale as complete; and the seller may sue the buyer for non-payment, or the buyer may sue the seller for non-delivery.

If the seller has merely the right of possession, as if he hired the goods; or if he has the possession only, as if he stole them, or found them, he cannot sell them and give good title to the buyer against the owner; and the owner may therefore recover them even from an honest purchaser who was wholly ignorant of the defect in the title of him from whom he bought them. This follows from the rule above stated, that only he who has in himself a right of property can sell a chattel, because the sale must transfer the right of property from the seller to the buyer. The only exception to the above rule is where money, or negotiable paper transferable by delivery (which is considered as money), is sold or paid away. In either case, he who takes it in good faith, and for value, from a thief or finder, holds it by good title. But if the owner once sold the thing, although he was deceived and induced to part with his property through fraud, he cannot reclaim it from one who in good faith buys it from the fraudulent party.

If anything remains to be done by the seller, to or in relation to the goods sold, for their ascertainment, identification, or completion, the property in the goods does not pass until that thing is done, and there is as yet no completed sale. Therefore, if there be a bargain for the sale of specific goods, but there remains something material which the seller is to do to them, and they are casually burnt or stolen, the loss is the seller's, because the property (or ownership) had not yet passed to the buyer.

So, if the goods are a part of a large quantity, they remain the seller's until selected and separated; and even after that, until recognized and accepted by the buyer, unless it is plain from words or circumstances that the selection and separation by the buyer are intended to be conclusive upon both parties.

If repairing or measuring or counting must be done by the seller before the goods are fitted for delivery or the price can be determined, or their quantity ascertained, they remain, until this be done, the seller's. And where part is measured and delivered this part passes to the vendee, but the portion not so set apart does not. But if the seller delivers them and the buyer accepts them, and any of these acts remain to be done, these acts will not be considered as belonging to the contract of sale, for that will be regarded as completed, and the ownership of the goods will have passed to the buyer, and these acts will be taken only to refer to the adjustment of the final settlement as to the price.

Thus, a purchaser offers a nurseryman a dollar apiece for two hundred out of a row of two thousand trees, which are all alike, and the offer is accepted. This is no sale, because any two hundred may be delivered, and therefore the property or ownership of any specific two hundred does not pass. But if the purchaser or seller had said the first two hundred in the row, or the last, or every third tree, or otherwise indicated the specific trees, there would have been a sale, and by the sale those specific trees would have become at once the trees of the buyer. The seller would dig up and deliver them as the buyer's trees, and if they were burned up by accident an hour after the sale, and before digging, the buyer would lose the trees. If not specified, however, even if they were paid for, they remain the property of the nurseryman, because, instead of an actual sale, there is only a bargain that he will select two hundred from the lot, and take up and deliver them. And if they are destroyed before delivery, this is the loss of the nurseryman.

Moreover, it is to be noticed that a contract for a future sale to take place either at a future point of time, or when a certain event happens, does not, when that time arrives, or on the happening of the event, become of itself a sale, transferring the property. The party to whom the sale was to be made does not then acquire the property, and cannot by tendering the price acquire a right to possession; but he may tender the price, or whatever else would be the fulfillment of his obligation, and then sue the owner for his breach of contract, if he will not deliver the goods. But the property in the goods remains in the original owner.

For the same reason that the property in the goods must be pass by a sale, there can be no actual sale of any chattel or goods which have no existence at the time. It may, as we have seen, be a good contract for a future sale, but it is not a present sale. Thus, in contracts for the sale of articles yet to be manufactured, the subject of the contract not being in existence when the parties enter into their engagement, no property passes until the chattel is in a finished state, and has been specially appropriated to the person giving the order, and approved and accepted by him.

As there can be no sale unless of a specific thing, so there is no sale but for a price which is certain, or which is capable of being made certain by a distinct reference to a certain standard.

SECTION II.

DELIVERY AND ITS INCIDENTS.

When a sale is effected, the buyer has an immediate right to the possession of the goods, as soon as he pays or tenders the price; or at once, without payment, if the sale be on credit. And the seller is bound to deliver the goods.

What is a sufficient delivery is sometimes a question of difficulty. In general, it is sufficient, if the goods are placed in the buyer's hands or his actual possession, or if that is done which is the equivalent of this transfer of possession. Some modes and instances of delivery we have already seen. We add, that if the goods are landed on a wharf alongside of the ship which brings them, with notice to the buyer, or knowledge on his part, this may be a sufficient delivery, if usage, or the obvious nature of the case, make it equivalent to actually giving possession. And usage is of the utmost importance in determining questions of this kind.

In general, the rule may be said to be, that that is a sufficient delivery which puts the goods within the actual reach or power of the buyer, with immediate notice to him, so that there is nothing to prevent him from taking actual possession.

When, from the nature or situation of the goods, an actual delivery is difficult or impossible, as in case of a quantity of timber floating in a boom, slight acts, as touching the timber, or even going near it and pointing it out, are sufficient to constitute a delivery, if they sufficiently indicate the transfer of possession. So if the property which is the subject of the sale is at sea, the indorsement and delivery of the bill of lading, or other instrument of title, is sufficient to constitute a delivery, and by such indorsement and delivery of the bill of lading the property in the goods immediately vests in the buyer; and he can transfer this to one who buys of him, by his own indorsement and delivery of the bill of lading. Where goods at sea are sold, the seller should send or deliver the bill of lading to the buyer within a reasonable time, that he may have the means of offering the goods in the market. And it has been held that a refusal of the bill of lading authorized the buyer to rescind the sale.

Until delivery, the seller is bound to keep the goods with ordinary care, and is liable for any loss or injury arising from the want of such care or of good faith. But if he exercises ordinary care and diligence in keeping the commodity, he is not liable for any loss or depreciation of it, unless this arises from some defect which he has warranted not to exist. Thus, in a case in New York, A sold to B a certain quantity of beef, B paying the purchase-money in full; and it was agreed between them that the beef should remain in the custody of A until it should be sent to another place. Some time after, B received a part, which proved to be bad, and the whole was found, on inspection, to be unmerchantable. The court held that, as the beef was good at the time of its sale, the vendee (or buyer) must bear the loss of its subsequent deterioration.

If the buyer lives at a distance from the seller, the seller must send the goods in the manner indicated by the buyer. If no directions are given, he must send them in such a way as usage, or in the absence of usage, as reasonable care would require. And generally all customary and proper precautions should be taken to prevent loss or injury in the transit. If these are taken, the goods are sent at the risk of the buyer, and the seller is not responsible for any loss. But he is responsible for any loss or injury happening through the want of such care or precaution. And if he sends them by his own servant, or carries them himself, they are in his custody, and, generally, at his risk, until delivery. But if the buyer distinctly indicates the way or means by which he wishes that the goods should be sent to him, as by such a carrier, or such a line, if the seller complies with his directions, and exercises ordinary care over the goods until they are delivered to the person or line so pointed out, his responsibility ends with this delivery, in the same manner as it would if he delivered the goods into the hands of the owner.

This question of delivery has a very great importance in another point of view; and that is, as it bears upon the honesty, and therefore the validity, of the transaction. As the owner of goods ought to have them in his possession, and as a transfer of possession usually does, and always should, accompany a sale, the want of this transfer is an indication, more or less strong, that the sale is not a real one, but a mere cover. The prevailing rule may be stated thus: Delivery is not essential to a sale at common law; but if there is no delivery, and a third party, without knowledge of the previous sale, purchases the same thing from the seller, he gains an equally valid title with the first buyer; and if he completes this title by acquiring possession of the thing before the other, he can hold it against the other. So, also, unless delivery or possession accompany the transfer of the right of property, the things sold are subject to attachment by the creditors of the seller. And if the sale be completed, and nevertheless no change of possession takes place, and there is no certain and adequate cause or justification of the want or delay of this change of possession, the transaction will be regarded as fraudulent and void in favor of a third party, who, either by purchase or by attachment, acquires the property in good faith, and without a knowledge of the former sale. This fact, that the thing sold remained in the possession of the seller, might be explained, and if shown to be perfectly consistent with honesty, and to have occurred for good reasons, and especially if the delay in taking possession was brief, the title of the first buyer would be respected.

If goods are sold in a shop or store, separated, and weighed or numbered if that be necessary, and put into a parcel, or otherwise made ready for delivery to the buyer, in his presence, and he request the seller to keep the goods for a time for him, this is so far a delivery as to vest the property in the goods in the buyer, and the seller becomes the *bailee* of the buyer. And if the goods are lost while thus in the keeping of the seller, without his fault, it is the loss of the buyer. (In law the word *bail* means "to deliver." Thus a "bailor" is one who delivers a thing to another; the "bailee" is the party to whom it is delivered; and "bailment" is the delivery. The "bail" of a party who is arrested, is he or they to whom the arrested person is delivered or given up, on their agreement that he shall be forthcoming when required by law.)

In a contract of sale there is sometimes a clause providing that a mistake in description, or a deficiency in quality or quantity, shall not avoid the sale, but only give the buyer a right to deduction or compensation. But if the mistake or defect be great and substantial, and affects materially the availability of the thing for the purpose for which it was bought, the sale is nevertheless void, for the thing sold is not that which was to have been sold.

If the buyer knowingly receives goods so deficient or so different from what they should have been that he might have refused them, he will be held to have waived the objection, and to be liable for the whole price; unless he can show a good reason for not returning them, as in the case of materials innocently used before discovery of the defects, or the like. Thus, where a man bought a chandelier warranted sufficient to light a certain room, and kept it six months, the court did not permit his to return it and refuse payment, although it was not what it had been warranted to be. Sometimes two or three months, or even less, is held too long a keeping to permit a subsequent return. But though the buyer cannot return the thing, yet, when the price is demanded, he may set off whatever damages he has sustained by the seller's breach of contract, and the seller can recover only the value to the buyer of the goods sold, even if that be nothing. But a long delay or silence may imply a waiver of even this right on the part of the buyer.

One who orders many things at one time, and by one bargain, may, generally, refuse to receive a part without the rest; but if he accepts any part, he severs that part from the rest, and rebuts (or removes) the presumption that it was an entire contract; the buyer will then be held as having given a separate order for each thing, or part, and as therefore bound to receive such parts as are tendered, unless some distinct reason for refusal attaches to them. If many several things are bought at one auction, but by different bids, and especially if the name of the buyer be marked against each, there is a separate sale to him of each one, and it is independent of the others; so that he must take and pay for any one or more, although the others are not what they should be, or cannot be had. If, however, it could be shown by the nature of the case, or by evidence, that the things were so connected that one was bought entirely for the sake of the other he would not be obliged to take the one unless he could have the other. This rule applies also when the things sold are lots of land. Indeed, the general rule may be stated thus. The question whether it is one contract, so that the buyer shall not be bound to receive any part unless the whole be tendered to him, will be determined by ascertaining from all the facts whether the parts so belong together that it may reasonably be supposed that none would have been purchased if the whole had not been purchased, or if any part could not have been purchased.

The buyer may have, by the terms of the bargain, the right of redelivery. For sales are sometimes made upon the agreement that the purchaser may return the goods within a fixed, or within a reasonable time. He may have this right without any condition, and then has only to exercise it at his discretion. But he may have the right to return the thing bought, only if it turns out to have, or not to have, certain qualities; or only upon the happening of a certain event. In such case the burden of proof is on him to show that the circumstances exist which are necessary to give him this right. In either case the property vests in the buyer at once, as in ordinary sales; but subject to the right of return given him by the agreement. If he does not exercise his right within the agreed time, or within a reasonable time if none be agreed upon, the right is wholly lost, the sale becomes absolute, and the price of the goods may be recovered in an action for goods sold and delivered. And if during the time the buyer so misuse the property as to materially impair its value, he cannot tender it back, but is liable for the price.

SECTION III.

CONTRACTS VOID FOR ILLEGALITY OR FRAUD.

As the law will not compel or require any one to do that which it forbids him to do, no contract can be enforced at law which is tainted with illegality. It may, however, be necessary to consider whether the contract be entire or separable into parts, and whether it is wholly or partially illegal. If the whole consideration, or any part of the consideration, be illegal, the promise founded upon it is void, whether the promise is legal or not. But if the consideration is legal, and the promise is in part legal and in part illegal, it is valid for the legal part and may be enforced for that part. Thus, if a master of a vessel agreed to smuggle goods, and in consideration of his doing so the owner promised to pay him one-fourth of his profits, and also to advance twenty dollars a month to his family during a certain time, the master could enforce no part of this promise, and recover no damages for any breach of it, because the consideration is illegal. But if, for one thousand dollars paid, the receiver agreed to sell and deliver a quantity of merchandise, and also to assist the buyer in some contemplated fraud, he would be bound to sell and deliver the goods, because the consideration was legal, and this part of the promise was legal, but not to assist in the fraud, because this part of the promise is illegal. I mean to say, that if a whole promise, or any part of a promise that cannot be severed into substantial and independent parts, is illegal, the whole promise is void. But if the consideration is legal, and the promise is legal in part and illegal in part, and that part of the promise which is legal can be severed from that part which is illegal, and then be a substantial promise having a value of its own, this legal part can be enforced. For further remarks upon this subject, however, I refer to the previous chapter on Consideration.

Formerly, an agreement to sell at a future day goods which the promisor had not at the time, and had not contracted to buy, and had no notice or expectation of receiving by consignment, was considered open to the objection that it was merely a wager, and therefore void. But later cases have admitted it to be a valid contract.

We have already said, in a preceding chapter, that fraud vitiates and avoids every contract and every transaction. Hence, a wilfully false representation by which a sale is affected; or a purchase of goods with the design of not paying for them; or hindering others from bidding at auction by wrongful means; or selling at auction, and providing by-bidders to run the thing up fraudulently; or selling "with all faults," and then purposely concealing and disguising them, as when a man advertised a ship for sale at auction "with all faults," but purposely put her in a situation where an important fault could not be easily detected; or any similar act will avoid a sale. No title or right passes by such sale to the fraudulent party; but the innocent party, whether buyer or seller, may waive the fraud, and insist that the fraudulent party shall not take advantage of his own fraud to avoid the sale.

A buyer who is imposed upon by a fraud, and therefore has a right to annul the sale, must exercise this right as soon as may be after discovering the fraud. He does not lose the right necessarily by every delay, but certainly does by any considerable and unexcused delay.

A seller may rescind and annul a sale if he were induced to make it by fraud. But he may waive the right and sue for the price. If, however, the fraudulent buyer gets the goods on a credit, and the seller sues for the price before the credit expires, this suit is a confirmation of the whole sale, including the credit; or rather it is an entire waiver of his right to annul the sale, and the suit cannot be maintained until the credit has wholly expired.

It a party who has been defrauded by any contract brings an action to enforce it, this is a waiver of his right to rescind, and a confirmation of the contract. Or if, with knowledge of the fraud, he offers to perform the contract on conditions which he had no right to exact, this has been held so effectual a waiver of the fraud that he cannot set it up in defense, if sued on the contract.

SECTION IV.

SALES WITH WARRANTY.

A SALE may be with warranty; and this may be general, or particular and limited. A general warranty does not extend to defects which are known to the purchaser; or which are open to inspection and observation, unless the purchaser is at the time unable to discover them readily, and relies rather upon the knowledge and warranty of the seller. A warranty may also be either express or implied. It is *not* implied by the law generally merely from a full, or, as it is called, a sound price. The rule of law, *caveat emptor* (*let the buyer take care*), prevents this. But this rule never applies to cases of fraud. As a general rule, however, mere silence on the part of the seller is not fraud; but the usage of the trade will be considered, and if that require a declaration of certain defects whenever they exist, the absence of such a declaration is a warranty against such defects. Mere declarations of opinion are not a warranty. Thus, in England, an action was brought on a warranty that certain goods were fit for the China market. The plaintiff produced a letter from the defendant, saying that he had goods fit for the China market, which he offered to sell cheap. But the court held that such a letter was not a warranty, but merely an invitation to trade, it not having any specific reference to the goods actually bought by the plaintiff.

If these declarations are intended to deceive, and have that effect, they may avoid the sale for fraud. And affirmations of quantity or quality, which are made pending the negotiations for sale with a view to procure a sale, and have that effect, will be regarded as a warranty; thus, in New York, it was held that a representation made by a vendor, upon a sale of flour in barrels, that it was in quality superfine or extra-superfine, and worth a shilling a barrel more than common, coupled with the assurance to the buyer's agent that he might rely upon such representation, was a warranty of the quality of the flour. So in England, where upon the sale of a horse the vendor said to the vendee, "You may depend upon it, the horse is perfectly quiet and free from vice;" this was held to amount to an express warranty that he was quiet and free from vice.

Goods sold by sample are warranted by such sale to conform to the sample; but there is no warranty that the sample is what it appears to be. Thus, in England, there was a sale of five bags of hops, with express warranty that the bulk answered the samples by which they were sold. The sale was in January; at that time the samples fairly answered to the commodity sold, and no defect was at that time perceptible to the buyer. In July following, every bag was found to have become unmerchantable and spoiled, by heating, caused probably by the hops having been fraudulently watered by the grower, or some other person, before they were purchased by the defendant. The seller knew nothing of this fact at the time of sale, and the samples were as much damped as the rest; and it was then impossible to detect it. It was held by the court that there was here no implied warranty that the bulk of the commodity was merchantable at the time of sale, although a merchantable price was given.

A breach of warranty does not always authorize the buyer to return the article sold, unless there be an agreement to that effect, or fraud; but only to sue on the warranty, and recover damages for the breach of it. But if one orders a thing for a special purpose known to the seller, he may certainly return it if it be unfit for that purpose, if he does so as soon as he ascertains its unfitness.

The seller of goods actually in his possession as owner is held to warrant his own title by the fact of the sale. But if the property be not in the possession of the vendor, and there be no assertion or ownership by him, no implied warranty of title arises.

If a thing is ordered for a special purpose, and is supplied, there is an implied warranty that it is fit for that purpose. In one case, the defendant was a dealer in ropes, and represented himself to be a manufacturer of the article. The buyer, a wine-merchant, applied to him for a crane-rope. The seller's foreman went to the buyer's premises, in order to ascertain the dimensions and kind of rope required. He examined the crane and the old rope, and took the necessary admeasurements, and was told that the new rope was wanted for the purpose of raising pipes of wine out of the cellar, and letting them down into the street; when he informed the buyer that a rope must be made on purpose. The seller did not make the rope himself, but sent the order to his manufacturer, who employed a third person to make it. It was held that, as between the parties to the sale, there was an implied warranty that the rope was a fit and proper one for the purpose for which it was ordered. And the seller was held responsible, not only for the rope, which broke, but for a pipe of wine which was thereby lost.

This principle must not be applied to those cases where an ascertained article is purchased, although it be intended for a special purpose. For if the thing itself is specifically selected and purchased, the purchaser takes upon himself the risk of its effecting its purpose. This is illustrated in an English case thus: "If a man says to another, 'Sell me a horse fit to carry me,' and the other sells a horse which he knows to be unfit to ride, he will be liable for the consequences; but if a man says.

'Sell me that gray horse to ride,' and the other sells it, knowing that the buyer will not be able to ride it, that would not make him liable." If he said, "Sell me that gray horse *if* he is fit to ride," and the seller sold it knowing he was not fit, he would be liable.

It has been much discussed whether a bill of sale, describing the article sold, amounts to a warranty that the article conforms to the description. It seems now to be well settled that it does. In a recent Massachusetts case, there was a bill of sale as follows: "H. & Co. bought of T. W. & Co. *two cases of indigo*, $272." The article sold was not indigo, but principally Prussian blue. No fraud was imputed to the seller, and the article was so prepared as to deceive experienced and skilful dealers in indigo. The naked question was presented, whether the bill of sale constituted a warranty that the article sold was *indigo*. And the court held that it did. Here the warranty implied by the bill of sale was as to the *kind of goods*. In another case the bill was, "Sold E. T. H. 2,000 gallons *prime quality winter oil*." The thing sold was oil, and winter oil; but not *prime quality*. And the Court held that the bill of sale amounted to a warranty that it was of *that quality*. In an English case, a vessel was advertised for sale as "copper fastened;" and that was held to be a warranty that she was so fastened according to the usual understanding of merchants.

One who sells provisions is always considered in law as warranting that they are good and wholesome.

(37.)

Bill of Sale of Personal Property.

Know all Men by these Presents, That I (*name of the seller*) in the county of for and in consideration of the sum of to in hand well and truly paid, at or before signing, sealing, and delivery of these presents, by (*name of the buyer*) the receipt whereof I the said do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said

To Have and to Hold the said granted and bargained unto the said heirs, executors, administrators, and assigns, to only proper use, benefit, and behoof forever, and the said does vouch himself to be the true and lawful owner of the goods and effects hereby sold, and to have in himself full power, good right, and lawful authority to dispose of the said in manner as aforesaid, and I do, for myself, my heirs, executors, and administrators, hereby covenant and agree to warrant and defend the said (*the goods sold*) unto the said heirs, executors, and administrators, and assigns, against the lawful claims and demands of all persons whomsoever:

In Witness Whereof, the said have hereunto set hand and seal this day of in the year of our Lord one thousand nine hundred and

Executed and Delivered in Presence of

(38.)

Bill of Sale of Personal Property, with a Condition to make it a Mortgage, with Power of Sale.

Know all Men by these Presents, That in consideration of paid by the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said the following goods and chattels, namely:

To Have and to Hold all and singular the said goods and chattels to the said and executors, administrators, and assigns, to their own use and behoof forever.

And hereby covenant with the grantee that the lawful owner of the said goods and chattels; that they are free from all incumbrances, that have good right to sell the same as aforesaid; and that will warrant and defend the same against the lawful claims and demands of all persons.

Provided Nevertheless, that if the grantor, or executors, administrators, or assigns shall pay unto the grantee or, executors, administrators, or assigns, the sum of in from this date, with interest semi-annually at the rate of per cent. per annum, and until such payment shall not waste or destroy the same, nor suffer them or any part thereof to be attached on mesne process; and shall not, except with the consent in writing of the grantee or representatives, attempt to sell or to remove from the same or any part thereof,—then this deed, as also note of even date herewith, signed by the said whereby promise to pay to the grantee or order the said sum and interest at the times aforesaid, shall be void.

But upon any Default in the performance of the foregoing condition, the grantee, or executors, administrators, or assigns, may sell the said goods and chattels by public auction, first giving day's notice in writing of the time and place of sale to the grantor or representatives. And out of the money arising from such sale the grantee , or representatives shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them in relation to the said property, or to discharge any claims or liens of third persons affecting the same, rendering the surplus, if any, to the grantor or executors, administrators, or assigns.

And it is Agreed, that the grantee , or executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid; and that, until default in the performance of the condition of this deed, the grantor and executors, administrators, and assigns, may retain possession of the above-mortgaged property, and may use and enjoy the same.

In Witness Whereof, the said hereunto set hand and seal , this day of in the year one thousand nine hundred and

Signed, Sealed, and Delivered in Presence of

SECTION V.

THE SALE OF ONE'S BUSINESS.

SUCH sales are not unfrequent in this country; and the seller always agrees and promises that he will not pursue that trade, business, or occupation again. There are numerous cases, both in English law-books and in our own, which have arisen from bargains of this kind. The law seems now to be settled, that such a contract is wholly void and inoperative, *provided* the seller agrees to give up his business and never resume it again, *at any time or anywhere;* that is, without any limitation of space or time; because it is against the public interest that a man should be permitted to cast himself out from his business or trade for the rest of his life. But the contract is good, if for a fair consideration the seller agrees not to resume or carry on that business within a certain time, or within certain limits. What these limits must be is not certain. The courts say they must be "reasonable," and made in good faith. A contract not to carry on a business in a certain town would undoubtedly be good. So, we should say, would be a bargain not to do so within a certain State. In one case in Massachusetts, a contract not to use certain machines in any of the

United States except *two* (which were Massachusetts and Rhode Island) was held valid, all of the States but two being considered as a sufficiently defined or limited place; but this was unusual. The courts generally would sanction such a bargain, if it were limited to only a part of the United States; as to all New England, for example.

In such a contract, it would be better for the parties to agree upon the amount which the seller should pay by way of damages, if he violated his bargain, because it might be very difficult to prove specific damages; and such a bargain, if it were reasonable, would be enforced by law.

Such damages, agreed on beforehand, are called *liquidated damages.* In all cases where damages are demanded, and are not agreed on, they are called *unliquidated damages*, and it is the duty of the jury to determine, from the evidence before them, what damages the injured party has suffered, and what amount would indemnify him.

CHAPTER XI.

STOPPAGE IN TRANSITU.

HERE is an instance where a Latin phrase has become English, by general adoption and use. *In transitu* means "in the transit," and the English phrase may just as well be used; but the Latin one is used much oftener. What the whole phrase *Stoppage in transitu* means, is this. A seller, who has sent goods to a buyer at a distance, and after sending them learns that the buyer is insolvent, may stop the goods at any time before they reach the buyer. His right to do this is called the right of *Stoppage in transitu.*

If the goods are sent to pay a precedent and existing debt, they are not subject to this right.

The right exists only upon actual insolvency; but this need not be formal insolvency, or bankruptcy at law; an actual inability to pay one's debts in the usual way being enough. If the seller, in good faith, stops the goods, in a belief of the buyer's insolvency, the buyer may at once defeat this stoppage, and reclaim the goods, by payment of the price. So he may, by a tender of adequate security, if the sale be on credit.

The stoppage must be effected by the seller, and evidenced by some act; but it is not necessary that he should take actual possession of the goods. If he gives a distinct notice to the party in possession, whether carrier, warehouseman, middleman, or whoever else, before the goods reach the buyer, this is enough. But a notice of stoppage *in transitu*, to be effectual, must be given either to the person who has the immediate custody of the goods; or if to the principal whose servant has the custody, then at such a time, and under such circumstances, as that he may, by the exercise of reasonable diligence, communicate it to his servant in time to prevent the delivery to the consignee.

Goods can be stopped only while *in transitu;* and they are in transitu only until they come into the possession of the buyer. But this possession need not be actual, a constructive possession by the buyer being sufficient to prevent this stoppage; as if the goods are placed on the wharf of the buyer, or on a neighboring wharf with notice to him, or in a warehouse with delivery of the key to him, or of an order on the warehouseman.

But the entry of the goods at the custom-house, without payment of duties, does not terminate the transit. If the buyer has demanded and marked them at the place where they had arrived on the termination of the voyage or journey, personally or by his agent; or if the carrier still holds the goods, but only as the agent of the buyer; in all these cases the transit is ended. But if the carrier holds them by a lien for his charges against the buyer, the seller may pay these charges and discharge the lien, and then stop the goods *in transitu.*

If the buyer has, in good faith and for value, sold the goods, "to arrive," before he has received them, and indorsed and delivered the bill of lading, this second purchaser holds the goods free from the first seller's right to stop them. But if the goods and bill are transferred only as security for a debt due from the first purchaser to the transferee, the original seller may stop the goods, and hold them subject to this security, and need pay only the specific advances made on their credit, or on that very bill of lading, and not a general indebtedness of the first purchaser to the second.

A seller who stops the goods *in transitu* does not rescind the sale, but holds the goods as the *property* of the buyer; and they may be redeemed by the buyer or his representatives, by paying the price for which they are a security; and if not redeemed, they become the seller's, only in the same way as a pledge might become his; that is, he may sell them at a proper time, and in a proper manner, and with due notice, so that the buyer may protect his interests. And if the seller then fails to obtain from them the full price due, he has a claim for the balance upon the buyer. If he gets more than the amount due to him, he must pay over the balance to the buyer or his assignees.

An honest buyer, apprehending bankruptcy, might wish to return the goods to their original owner; and this he could undoubtedly do, if they have not become distinctly his property, and the seller his creditor for the price. But if they have, the buyer has no more right to benefit this creditor by such an appropriation of these goods, than any other creditor by giving him any other goods.

CHAPTER XII.

GUARANTY.

A GUARANTOR is one who is bound to another for the fulfilment of a promise, or of an engagement, made by a third party. This kind of contract is very common. Generally it is not negotiable; that is, not transferable so as to be enforced by the transferee as if it had been given to him by the guarantor. No special form or words are necessary to the contract of guaranty; and if the word "guarantee" be used, and the whole instrument contains all the characteristics of a note of hand, payable to order or bearer, then it is negotiable. Thus, in a case in

New York, the instrument was as follows: "For and in consideration of thirty-one dollars and fifty cents received of B. F. Spencer, I hereby guarantee the payment and collection of the within note to him or *bearer*. Auburn, Sept. 25, 1837. (Signed) Thomas Burns." And it was held negotiable. What *negotiable* means will be more fully explained in the chapter on Notes of Hand and Bills of Exchange.

The guaranty may be enforced, although the original debt cannot; as, for example, the guaranty of the promise of a wife or an infant; and sometimes the guaranty of a debt is requested, and given, for the very reason that the debt is not enforceable at law. But, generally, the liability of the principal measures and limits the liability of the guarantor. And if the creditor agree that the principal debt shall be reduced or lessened in a certain proportion, the obligation of the guarantor is reduced by law in an equal proportion.

A contract of guaranty is construed somewhat strictly. Thus, a guaranty of the notes of one, does not extend to notes which he gives jointly with another.

A guarantor who pays the debt of the principal may demand from his creditor the securities he holds, although not an assignment of the debt itself, or of the note or bond which declares the debt, for that is paid and discharged. And sometimes the creditor will not be permitted to resort to the guarantor until he has collected as much as he can from these securities.

Unless the guaranty is by a sealed instrument, there must be a consideration to support it. If the original debt or obligation rest upon a good consideration, this will support the promise of guaranty, if this promise was made at the same time with or prior to the original debt. But if that debt or obligation be first incurred and completed before the guaranty is given, there must be a new consideration for the promise to guarantee that debt or the guaranty is void. But the consideration need not pass from him who receives the guaranty to him who gives it. Any benefit to him for whom the guaranty is given, or any injury to him who receives it, is a sufficient consideration if the guaranty be given because of it.

A guaranty is not binding unless it is accepted, and unless the guarantor has knowledge of this. But the law presumes this acceptance in general, when the giving of the guaranty and any action on the faith of it, by the party to whom it is given, are simultaneous. In New York, wherever the guaranty is absolute, notice of its acceptance is unnecessary, unless expressly or impliedly required by the offer of guaranty. But, generally, an offer to guarantee a future operation, especially if by letter, does not bind the offerer unless he has such notice of the acceptance of his offer as would give him a reasonable opportunity of making himself safe.

If the liability of the principal be materially varied by the act of the party guaranteed, without the consent of the guarantor, the guarantor is discharged. Many interesting cases have arisen which involve this question. Thus, where a bond was given conditioned for the faithful performance of the duties of the office of deputy collector of direct taxes for eight certain townships, and the instrument of appointment, referred to in the bond, was afterwards altered so as to extend to another township without the consent of the surety, the Supreme Court of the United States held that the surety was discharged from his responsibility for moneys collected by his principal after the alteration. Again, in an English case, the facts were, that, in a bond by sureties for the careful attention to business and the faithful discharge of the duties of an agent of a bank, it was provided "that he should have no other business of any kind, nor be connected in any shape with any trade, manufacture, or mercantile copartnery, nor be agent for any individual or copartnery in any manner or way whatsoever, nor be security for any individual or copartnery in any manner or way whatsoever." The bank subsequently, without the knowledge of the sureties, increased the salary of the agent, he undertaking to bear one-fourth part of all losses which might be incurred by his discounts. It was held that this was such an alteration of the contract, and of the liability of the agent, that the sureties were discharged, notwithstanding that the loss arose, not from discounts, but from improper conduct of the agent.

The guarantor is also discharged if the liability or obligation be renewed or extended by law. As if a bank, incorporated for twenty years, be renewed for ten more, and the officers and business of the bank go on without change; the original sureties of the cashier are not held beyond the first term. So a guaranty to a partnership is extinguished by a change among the members, although neither the name nor the business of the firm be changed. But a guaranty, by express terms, may be made to continue over most changes of this kind.

A specific guaranty, for one transaction which is not yet exhausted, is not revocable. If it be a continuing or a general guaranty, it is revocable, unless an express agreement, founded on a consideration, makes it otherwise.

A creditor may give his debtor some accommodation or indulgence without thereby discharging his guarantor. It would seem just, however, that he should not be permitted to give him any indulgence which would materially prejudice the guarantor. Generally, a guarantor may always pay a debt, and so acquire at once the right of proceeding against the party whose debt he has paid. On this ground, it has been held, that where a surety requested the creditor to proceed against the principal debtor, and the creditor refused to do this, and afterwards the debtor became insolvent and the surety was without indemnity, still the surety (or guarantor) was not discharged, because he might have paid the debt, and then sued the party whose debt he paid. In New York, it seems to be the law, that, if the surety requests the creditor to proceed against the principal debtor and he refuses, and the principal debtor afterwards becomes insolvent, the surety will be discharged. If, by gross negligence, the creditor has lost his debt, and has deprived the surety of security or indemnity, the surety must be discharged unless he was equally negligent. If a creditor gives time to his debtor by a binding agreement which will prevent a suit in the meantime, this undoubtedly discharges the guarantor (unless the surety consents to the delay) because it deprives him of his power of acquiring a right of proceeding against the debtor, by paying the debt; for the debtor cannot during that time be sued.

If there be a failure on the part of the principal, and the guarantor is looked to, he should have reasonable notice of this. And, generally, any notice would be reasonable which would be sufficient in fact to prevent his suffering from the delay. And if there be no notice, and the guarantor has been unharmed thereby, he is not discharged.

If a guaranty purport to be official, that is, if it be made by one who claims to hold a certain office, and to give the promise of guaranty only as such officer, and not personally, the general rule is, that he is not liable personally, provided he actually held that office and had a right to give the guaranty officially. But he would still be held personally, if the promise made, or the relations of the parties indicated that credit was given personally to the parties promising, and not merely to them in their official capacity; or if he had no right to give the promise in his official capacity.

A guaranty was given for the price of a cargo of iron, and the buyer bargained with the seller to pay him more than the fair price, the excess to go towards an old debt. The guaranty was held to be altogether void, because fraudulent; and could not be enforced even for the fair price.

FORMS OF GUARANTY.

(39.)

Guaranty to be Indorsed on a Note.

For value received I guarantee the payment of the within-written note.

(*Date.*) (*Signature.*)

(40.)

Guaranty of a Note on Separate Paper.

For value received I guarantee the due payment of a promissory note dated whereby promises to pay to , dollars, in months.

(*Date.*) (*Signature.*)

(41.)

Guaranty in Another Way.

For value received I guarantee that the within (*note or bill, or that such a note or bill, describing it*) will be collected and paid if demanded in due course of law.

(*Date.*) (*Signature.*)

(42.)

Letter of Guaranty.

***Sir,*— If you will sell to Mr.** of the goods he wishes to buy (*or the goods may be described*) to the amount of (*this may be omitted if the guaranty is intended to be of any amount*), within year (*or days or months, or the time may be omitted if it is not intended to limit it*) from the date hereof, I, for value received, hereby promise and guarantee that the price thereof shall be duly paid. (*This letter should also state on what terms the goods should be sold, as to credit, delivery, etc., unless it is intended to leave all this to the buyer and seller.*

(*Date.*) (*Signature.*)

When goods or stocks or other securities are given as collateral security for borrowed money or any other debt, an instrument is sometimes given, the intention of which is to guarantee that the collaterals should be and remain sufficient to secure the indebtedness. It may be in one of the following forms, as the bargain requires. These are sometimes called "margin guaranties."

(43.)

Guaranty with Collaterals authorizing Sale.

Whereas, I (*or we*) have deposited with as collateral security for payment at maturity of the following (*here describe the debt guaranteed.*)

Now this Witnesseth, That in the event of the non-payment at maturity of any or all of these hereby authorize assigns, to sell the above (*the collaterals*) at public or private sale, or at the brokers' board, without notice to and apply proceeds to payment of said and all necessary expenses, holding responsible for any deficiency.

In Witness Whereof, have hereunto set hand and seal , this day of one thousand nine hundred and

(*Signature.*)

(*Witness.*)

(44.)

Guaranty with Collaterals, promising Additional security or authorizing Sale.

Having Borrowed this Day of (*the sum borrowed*) on the following collaterals (*here describe the collaterals.*)

I Hereby Agree, in case the market-price of the said stock should fall at any time during the continuance of the loan to an amount insufficient to cover the sum loaned, with per cent. margin added thereto, that in such event I will, on demand, deposit additional security to be approved by him, which shall be sufficient to keep the collaterals thus deposited equal to a sum per cent. above said loan, and so as often as said collaterals shall diminish; and that, in default thereof, the said shall have power to sell at public or private sale, without notice, all, or any of the said securities (as well as any others he may hold), to pay the amount of the said loan, with all interest and charges thereon, and for so doing, I fully release him of all claims, actions, and causes thereof.

CHAPTER XIII.

THE STATUTE OF FRAUDS.

SECTION I.

ITS PURPOSE AND GENERAL PROVISIONS.

THE Statute of Frauds, so called, was passed in the 29th year of Charles II. (1677) for the purpose of preventing frauds and perjuries, by requiring in many cases written evidence of a contract. In nearly all our States a similar statute has been enacted. But no two of the statutes of the different States agree exactly in all their provisions. They do, however, agree substantially; and we shall give in this chapter the prevailing and nearly universal rules for the construction and application of this statute. It is often of very great importance in commercial transactions. Those provisions which especially relate to business law are contained in the fourth and seventeenth sections.

By the fourth section, it is enacted that "no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or any contract for sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof: unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

By the seventeenth section, it is enacted that "no contract for the sale of any goods, wares, and merchandises, for the price of £10 sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

The second and fifth clauses of the fourth section, and the whole of the seventeenth, relate to our present subject. The second clause prevents an *oral* guaranty from being enforced at law; but if money be paid on one, it cannot be recovered back.

SECTION II.

A PROMISE TO PAY THE DEBT OF ANOTHER.

It is very often difficult to say whether the promise of one to pay for goods delivered to another is an *original* promise, as to pay for one's own goods, and then it need not be in writing, or a promise to pay the debt or guaranty the promise of him to whom the goods are delivered, and then it must be in writing. If it be a promise to pay the debt of another, it is said to be a *collateral* promise, and not an *original* promise. The question may always be said to be: *To whom did the seller give, and was authorized to give, credit?* This question the jury will decide, upon consideration of all the facts, under the direction of the court. If a seller sues one to whom he did not deliver the goods, on the ground that this other promised to pay for them, then the question is, Did this other promise to pay for them as for his own goods? for then the promise need not be in writing. Or did he promise to pay for them as for the goods of the party receiving them? and then it is a promise to pay the debt of another, and must be in writing. If, on examination of the books of the seller, it appears that he charged the goods to the party who received them, it will be difficult, if not impossible, for the seller to maintain that he sold them to the other party. But if he charged them to this other, such an entry would be good evidence, and, if confirmed by circumstances, strong evidence that this party was the purchaser. But it cannot be conclusive; for the party not receiving the goods may always prove, if he can, that he was not the buyer, and that he promised only as surety for the party who was the buyer; and, consequently, that his promise cannot be enforced if not in writing. And, in general, in determining this question, the court will always look to the actual character of the transaction, and the intention of the parties.

The courts, both in England and in America, have often endeavored to illustrate this question. Thus, in an early English case, the court said: "If two come to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does not pay you, I will,' this is a *collateral* undertaking, and void, without writing, by the Statute of Frauds. But if he says, 'Let him have the goods, I will be your paymaster,' this is an undertaking as for himself, and he shall be intended to be the very buyer, and the other to act but as his servant." So, in a case in Maryland, the court said: "If B gives credit to C for goods sold and delivered to him, on the promise of A to 'see him paid,' or 'to pay him for them if C should not,' in that case it is the immediate debt of C, for which an action will lie against him, and the promise of A is a collateral undertaking to pay that debt [and must be in writing], he being only liable as a surety. But where the party undertaken for is under no liability himself, the promise is an original undertaking of the party promising, and binding upon him without being in writing. Thus, if B furnishes goods to C, on the express promise of A to pay for them, and if A says to him, 'Let C have goods to such an amount, and I will pay you,' and the credit is given to A, in that case C being under no liability, there is nothing to which the promise of A can be collateral; but A being the immediate debtor, it is his original undertaking, and not a promise to answer for the debt of another;" and therefore need not be in writing.

Whenever the main purpose and object of the promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing the liability of another. If an old debt is extinguished by a new promise, this promise is considered as an original one, and not within the requirement of the statute.

If there be an oral promise to pay the debt of another, and also to do some other thing, this last can be enforced at law, if this other thing, and so much of the promise as relates to it, can be severed from the debt of the other and the promise relating to that debt; for although *that* promise must be in writing, the other may be oral.

SECTION III.

AN AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR.

UNDER the fifth clause in the fourth section, it is held that an agreement which *may* be performed within the year is not affected by the statute, as the words, "that is not to be performed within one year," do not apply to an agreement which, when made, was, and by the parties was understood to be, fairly capable of complete execution within a year, without the intervention of extraordinary circumstances,—although in point of fact its execution was extended much beyond the year. So where one agreed orally, for one guinea, to give another a number of guineas on the day of his marriage, it was held that this promise was not within the statute, that is, not one which the statute required to be in writing, because he might be married within a year, and the promisor was therefore bound by it. So where one agreed orally never to go into the staging business in a certain place, as this contract could last only while the promisor lived, and he might die within a year, he was held to be bound by it.

SECTION IV.

THE FORM AND SUBJECT MATTER OF THE AGREEMENT.

THE "agreement" must be in writing; but generally, in this country, the writing need not contain or express the consideration, which may be proved otherwise. Nor need it be all on one piece of paper. For it is sufficient if on several pieces, as in several letters, which, however, relate to one and the same business, and may fairly be read together as the statement of one transaction. But it must appear from the papers that they are so connected.

The "signature" may be in any part of the paper,—the beginning, middle, or end, except in those of our States in which the statute has the word "subscribed" instead of "signed;" in which case it should be in the usual place at the bottom. If the name and the agreement be *printed*, it is sufficient; hence, a printed shop-bill, with the name of the seller, as usual, at the beginning, if delivered to the buyer, is generally sufficient to charge the seller in an action for refusing to deliver the goods.

Shares in railroad companies, in manufacturing companies, and, generally, in all corporations and joint-stock companies, are "goods, wares, or merchandises," within the meaning of the statute, in this country, and an agreement for their purchase and sale must therefore be in writing.

It may be further remarked, that the operation of the statute has been always limited to such contracts as have not been executed in any substantial part, and therefore remain wholly executory. For if they had been executed substantially in good part, they are binding, although only oral.

In Massachusetts, the Statute of Frauds also provides (3d section) that no action shall be brought to charge any person upon, or by reason of, any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless it be made in writing, and signed by the party to be charged. And there are provisions substantially similar to this in the statutes of Maine and Vermont.

Instead of the "£10" in the seventeenth section of the English Statute, the sum mentioned in the Statutes of Frauds of the different States, is, generally, from thirty to fifty dollars.

CHAPTER XIV.

PAYMENT AND TENDER.

SECTION I.

HOW PAYMENT MAY BE MADE.

THE obligations which arise out of most mercantile contracts are to be satisfied by payment of money. The parties may always agree to any specific manner of payment, and then that becomes obligatory on the creditor as well as the debtor. As, by deducting the amount to be paid from a debt due to the debtor either from the creditor or from any one else. Or the amount may be made, by agreement, payable by a bill or note. If the debt is to be paid by a bill, it must be such a bill as is agreed upon, and this must be tendered by the debtor. But the word "bill" does not necessarily mean an "approved bill;" and if this phrase be itself used, it means only a bill to which there is no reasonable objection; that is, one which ought to be approved.

In the absence of any especial agreement, the only payment known to the law is by cash, which the debtor must pay when it is due, or tender to the creditor.

The tender should, properly, be in cash, or in bills made a legal tender by law, and must be so if that is required; but a tender in good and current bank-bills is sufficient, unless it be objected to because they are not money.

Generally, if the tender be refused for any express and specific reason, the creditor cannot afterwards take advantage of any *informality*, to which he did not object at the time of the tender.

The tender may be of a larger sum than is due. But a tender of a larger sum, if made with a requirement of change or of the balance, is not good. Nor must it be accompanied with a demand or condition that any instrument or document shall be delivered; nor that the sum tendered shall be received as all that is due; nor that a receipt in full shall be given. But a simple receipt for so much money paid may be demanded. We have already seen that, if a receipt be given, it is only strong evidence of payment, but not conclusive. And even if it be "in full of all demands," it is still open to explanation or denial by evidence.

A lawful tender, and payment of the money into court, is a good defense to an action for the debt. But the creditor may break down this defense by proving that, subsequently to the tender, he demanded the money of the debtor, and the debtor refused to give it.

If the buyer or debtor give, and the seller or creditor receive, a negotiable note or bill for the sum due, this is not anywhere absolute and conclusive payment. In Maine and in Massachusetts the law presumes that such note or bill is payment of the debt, unless a contrary intention is shown. In nearly all the States of this Union but those two, and in the Supreme Court of the United States, it is not payment, unless the intention of the parties that it should be so is shown. In New York, it has been held that the debtor's own promissory note is not payment, even if it be intended or expressly agreed that it should be. If a creditor, who receives from his debtor any bill or note, negotiates or sells it for value to a third party, without making himself liable, the bill or note was payment, although it be dishonored, because it has been good to the debtor, and he has received the avails of it; and if the law did not hold that the bill had paid the debt, he could sue the original debt, and then he would have the value of the bill, or payment, twice. Not so, however, if he negotiates it in such a way that he is himself liable upon it; for if he pays it, he loses what he sold it for, unless he can recover his debt from his debtor.

SECTION II.

APPROPRIATION OF PAYMENT.

If one who owes several debts to his creditor makes to him a general payment, it may be an important question to which of those debts this payment shall be appropriated; for some of them may be secured, and others not, or some of them may carry interest, and others not, or some of them be barred by the Statute of Limitations, and others not.

There is no doubt that the payor may appropriate his payment, at the time of the payment, at his own pleasure. And if he does not exercise this right, the receiver may, at the time of payment, make the appropriation. But if neither party does this *at that time*, and at a future period the question comes up as to which party may then make the appropriation, or rather, how the law will then appropriate the payment, it is then the better and prevailing rule, that, if the court can ascertain, either from the words used, or from the circumstances of the case, or from any usage, what was the intention and understanding of the parties at the time of the payment, that intention will be carried into effect. And if this cannot be ascertained, then the court will direct such appropriation of the payment as will best protect the rights and interests of both parties, and do justice between them. And one reason for this conclusion would be, that the law would presume that this was the original intention of the parties. A very general rule, which would indeed be always adopted in the absence of especial reason to the contrary, is, to apply the payment first to the oldest debt, until that is satisfied, and then go on applying the payment to the other debts in the order of their age.

If A owes a debt to B, on B's own account, and another debt to B as trustee for somebody, and A pays B a sum of money without appropriating it, B cannot apply it all to the debt, due him on his own account; but must divide it between that debt and the debt due to him as trustee, in proportion to their respective amounts. Because it is his duty as trustee to take as good care of the debts due to him for another, as of those due to him on his own account.

We have spoken of a "bill or note;" and notes are sometimes called bills; so bank-notes are often called bank-bills. But the legal meaning of "bill" is always a *draft* or *order* on somebody to pay money. A note is a *promise* to pay. See chapter on notes and bills.

CHAPTER XV.

RECEIPTS AND RELEASES.

A RECEIPT is only an acknowledgment that a sum of money has been paid. It may be in one word, as when, under a bill of parcels, the seller writes the word "paid," and signs it. More commonly the words are, "Received Payment." Formerly it was usual to add the words "Errors Excepted." Then it grew customary to write the initial letters "E. E." instead of the words; but all this is unnecessary. If there be an error in the receipt, or in the paper receipted, the law permits the party injured by it to explain and correct the error, although there be no express reservation or exception of errors.

Receipts are of all degrees of fulness, from the single word "paid," to those which relate the particulars for which the receipt is given, and the manner in which the money was paid or the thing delivered. I give the following forms:

(45.)

(*Date*) Received from . . . . dollars.

(*Signature.*)

(46.)

(*Date*) This day I have received from . . . . dollars, on account of

(*Signature.*)

(47.)

(*Date*) This day the following (*papers*, or other articles, enumerating and describing them) were delivered to me by , (*add, on account of, or in execution of, the promise or bargain, describing it; and, if they are delivered for any particular purpose, describe that*), and I hereby acknowledge the receipt of them.

(*Signature.*)

Every receipt is open to evidence, not only to explain it, but to contradict it. Herein releases differ from receipts. A release gives up some right or claim which the releasor had against the releasee. It is in the nature of a contract, and therefore cannot be controlled or contradicted by evidence, unless on the ground of fraud. But if its words are ambiguous, or may have either of two or more meanings, evidence is receivable to determine the meaning.

Like every other contract, it requires a consideration, and is of no force without one. But here comes in the rule of law as to a seal. The general rule is, as has been stated before, a seal implies, or is the same as, the assertion of a consideration; and therefore it is always customary to put a seal to a release. But a release, even with a seal, if it can be shown to have been given without any consideration whatever, can be set aside. It is always best to state in the release itself that it was given for a consideration, and what the consideration is. A release properly drawn, and duly signed and sealed, is a complete defence to an action grounded on any of the debts or claims released.

The following forms are for releases of various kinds:

(48.)

A General Release.

Know all Men by these Presents, That I, *(the name of the releasee)* of for and in consideration of the sum of , to me paid by of , have remised, released, and forever discharged, and by these presents do, for me, my heirs, executors, and administrators, remise, release, and forever discharge the said his heirs, executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements promises, variances, damages, judgments, extents, executions, claims, and demands whatsoever, in law and in equity, which against the said I ever had, now have, or which I, my executors or administrators hereafter can, shall, or may have, for, upon, or by reason of, any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In Witness Whereof, I hereunto set my hand and seal this day of 19 .

(49.)

A Mutual General Release by Indenture.

This Indenture, Made between , of and of , witnesseth, that the said doth, by these presents remise, release, and forever quit claim, unto the said , all and all manner of actions, (*as before*); and this indenture further witnesseth, that the said by these presents, doth remise, release, and forever quit claim, unto the said all and all manner of actions (*as before*).

In Witness Whereof, &c.

(50.)

A Release from Creditors to a Debtor, under a Composition.

To all Persons to whom these Presents may come, we who have hereunto set our hands and seals, creditors of of , send greeting. Whereas, the said is indebted to us his said creditors, in several sums of money, which he is not able fully to satisfy and discharge; we therefore have agreed, and do hereby agree, to accept of the sum of in full payment and satisfaction of all the debts, owing to us respectively at the date hereof, by and from the said which is paid by or for the said (*the name of the debtor*) to (*the names of the persons to whom the money is to be paid for the creditors releasing*) , for the use of, and to the intent that the same may be shared and divided amongst us his said creditors, in proportion and according to the debts to us severally due and owing: Now therefore know ye, that for the consideration aforesaid, each of us, the said creditors who have hereunto set our hands and seals, for him and herself, his and her heirs, executors, and copartners, doth by these presents, remise, release, and forever discharge the said his heirs, executors, and administrators, of and from our said several debts, and all and all manner of action and actions which against the said , each and every of us the said creditors now hath, or which each and every of our heirs, executors, or administrators, respectively, hereafter may, can, or ought to have, claim, or demand for, upon, or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever from the beginning of the world.

In Witness Whereof, &c.

(51.)

A Release of all Legacies.

Know all Men by these Presents, That I of widow, have remised, released, and forever quit-claimed, and by these presents do for me unto of , gentleman, executor of the last will and testament of late of , deceased, and to the heirs, executors, and administrators of the said , all legacies, gifts, bequests, sum and sums of money and demands whatsoever, bequeathed and given unto me the said , in and by the last will and testament of , deceased, and all manner of actions and suits, sum and sums of money, debts, duties, reckonings, accounts, and demands whatsoever, which I the said ever had, now have, or that I, my executors or administrators, can or may, at any time or times hereafter, have, challenge, or demand against the said his executors, administrators, or assigns, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the day of the date hereof.

In Witness Whereof, etc.

(52.)

A Release of a Bond, it being Lost.

To all to whom these Presents may come, (*name of releaser*) sendeth greeting. Whereas by his bond or obligation, bearing date (*recite the bond*), as by the said bond or obligation, and the condition thereof may appear: And whereas the sum of mentioned in the said bond, with all the interest for the same, is paid and satisfied unto me the said , in full discharge for the said bond or obligation: And whereas the said bond or obligation is lost, or at present mislaid, so that it cannot be found to be delivered up to the said , to be cancelled: Now know ye, that I the said for the consideration aforesaid, have remised, released, and quitclaimed, and by these presents do, for me, my executors and administrators, remise unto the said his heirs, executors, and administrators, as well the said recited bond or obligation, as all such sums of money as therein are mentioned to be due and payable, unto me the said my executors, administrators, or assigns; and also all actions, suits, cause and causes of action, accounts, debts, reckonings, sums of money, judgments, executions, and demands whatsoever, which I, the said ever had, now have, or that I, my executors, administrators, or assigns, or any of us, can or may have, for or against the said his executors or administrators, for, or by reason of, the said recited bond or obligation, or any other matter, cause, or thing whatsoever, concerning the same, from the beginning of the world to the day of the date hereof.

In Witness Whereof, I the said have hereunto set my hand and seal this day of

(*Signatures.*) (*Seals.*)

In Presence of

(The following covenant may be inserted before "In witness.")

And I, the said for me my executors , do covenant , to and with the said , his that if I the said , my executors, , or any of us, at any time hereafter, do find or can obtain the said recited bond or obligation, then I, the said , my executors , or some of us, shall and will, within two months next after the said obligation shall be found as aforesaid, deliver or cause to be delivered, the said bond or obligation, unto the said his

(53.)

A Release of a Judgment.

This Indenture, Made the day of in the year one thousand nine hundred and between of the second part,

Whereas, Judgment was rendered on the day of in the year one thousand nine hundred and in an action in the between plaintiff and defendant in favor of the said against the said for the sum of as appears by the

Now this Indenture Witnesseth, That the said part of the first part, in consideration of the sum of to duly paid at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, released, discharged and set over, and by these presents do grant, release, discharge and set over, unto the said part of the second part, the following described premises, to wit :

Together with the hereditaments and appurtenances thereto belonging ; and all the right, title and interest of the said part of the first part, of, in and to the same to the intent that the lands hereby conveyed may be released and discharged from the said above-mentioned judgment, and from all lien or incumbrance that has attached to the same, by reason of the recovery of the said judgment, as free and clear in all respects as though said judgment had not been rendered. To have and to hold, the lands and premises hereby released and conveyed, to the said part of the second part heirs and assigns, to their only proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim, under and by virtue of the judgment aforesaid.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

In Presence of

(54.)

A Release of a Condition.

Know all Men by these Presents, That I, of , for divers good considerations me hereunto moving, have remised, released, and quit-claimed, and by these presents, for me, my executors, administrators, and assigns, do unto of , his heirs, executors, administrators, and assigns, as well one proviso or condition, and all and every the sum and sums of money, specified in the same proviso or condition, contained or comprised in one pair of indentures of bearing date , made between me, the said of the one part, and the said of the other part, and also all and all manner of actions and suits, cause and causes of actions and suits, for or concerning the said proviso or condition.

In Witness Whereof, I the said have hereunto set my hand and seal this day of

(*Signature.*) (*Seal.*)

In Presence of

(55.)

A Release of a Covenant contained in an Indenture of Lease.

To all Persons to whom these Presents may come, (*name of releaser*) sendeth greeting. Whereas in and by an indenture of lease, bearing date made between , of the one part, and the said of the other part, there is contained a covenant in these words following, viz. (*recite the covenant verbatim, as therein contained*) whereunto relation being had, it doth at large appear: Now know ye, that I, the said , for divers good causes and considerations, me hereunto moving, have remised, released, and quit-claimed, and by these presents for me do unto the said , his the said covenant, grant, clause, agreement, and article, before rehearsed or recited, and all and every other matter, thing and things specified, declared, and contained in the same covenant, clause, and agreement, and all the benefit, profit, advantage, and commodity, that by any manner of means, may or might arise, grow, come, or happen to me the said , for or by reason of the same covenant, clause, article, or agreement, or any word, sentence matter, thing, or things therein contained, so that the said his executors and assigns, and every of them, from henceforth forever, shall be fully acquitted, released, and discharged against me the said my executors and administrators, and every of us, of, from, and for the said covenant, grant, clause, article, and agreement before rehearsed or recited, and of, from, and for, everything and things, touching the same (but this present release shall not in anywise extend to any other covenant, clause, or article in the said indenture contained).

In Witness Whereof, I the said have hereunto set my hand and seal this day of

(*Signature.*) (*Seal.*)

In Presence of

(56.)

A Release in Extinguishment of a Power.

To all Persons to whom these Presents may come, Now know ye, that I, the said , pursuant to the said agreement, and for divers good causes and considerations me hereunto moving, have released, extinguished, and discharged, and by these presents do fully and absolutely release, extinguish, and discharge, the said recited power for raising the said sum of as aforesaid, and all the lands therein comprised, or subject thereto, so that I, the said shall not, nor will, at any time or times hereafter, raise the same, or any part thereof, or hereafter charge the said lands with the payment thereof, or any part thereof.

In Witness Whereof, I the said have hereunto set my hand and seal, this day of

(*Signature.*) (*Seal.*)

In Presence of

(57.)

A Release from a Lessor to a Lessee (upon his surrendering his Lease) from the Covenants therein.

To all Persons to whom these Presents may come, (*name of releaser*) sends greeting: Whereas the said by his indenture of lease, bearing date , did demise unto a message in at a certain rent, for a certain term of years, of which about years are yet to come and undetermined, in which said lease are contained covenants for repairing the said premises, and other covenants, on the part of the said to be performed. And whereas, by agreement between the said and the said hath delivered up the said recited lease, and surrendered the same, and all his interest and term in and to the said house and premises: Now therefore know ye, that the said , in consideration thereof, doth hereby, for himself, his heirs, executors, and administrators, remise, release, and forever discharge the said his executors and administrators, of and from all and every the covenants and agreements, in the said recited lease contained, by and on the part and behalf of the said his to be done and performed, and from all actions, suits, costs, charges, payments, damages, claims, and demands whatsoever in law and equity, for or concerning the same in any manner of wise.

In Witness Whereof, I the said have hereunto set my hand and seal this day of

(*Signature.*) (*Seal.*)

In Presence of

(58.)

A General Release of Dower.

To all to whom these Presents shall come, (*name of releaser*) send greeting: Know ye, that the said the party of the first part to these presents, for and in consideration of the sum of lawful money of the United States, to her in hand paid at or before the ensealing and delivery of these presents, by of the second part, the receipt whereof is hereby acknowledged, hath granted, remised, released, and forever quit-claimed, and by these presents doth grant, remise, release, and forever quit-claim, unto the said party of the second part, heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim and demand whatsoever, in law and equity, of her, the said party of the first part, of, in, and to (*here describe the estate the dower in which is released*) so that she, the said party of the first part, her heirs, executors, administrators or assigns, nor any other person or persons, for her, them, or any of them, shall not have, claim, challenge, or demand, or pretend to have, claim, challenge, or demand, any dower or thirds, or any other right, title, claim, or demand whatsoever, of, in, or to the same, or any part or parcel thereof, in whosesoever hands, seisin, or possession, the same may or can be, and thereof and therefrom shall be utterly barred and excluded forever by these presents.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(59.)

A Release of Dower to the Heir.

Know all Men by these Presents, That I relict of late , as well for and in consideration of to me paid, at or before , by my son , the receipt whereof I do hereby acknowledge, and for the love and affection which I have to my said son, have granted, remised, released, and forever quit-claimed, and by these presents do unto the said his heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property claim, and demand whatsoever, in law and in equity, of me the said of, in, and to (*a description of the parcel of land in which dower is released*) so that neither I, the said my heirs, executors, or administrators, nor any other person or persons for me, them, or any of them, shall have, claim, challenge, or demand, or pretend to have any dower or thirds, or any other right to claim or demand of, in, or to the said premises, but thereof and therefrom, shall be utterly debarred and excluded, forever, by these presents.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(60.)

A Release of Dower in Consideration of an Annuity given by Will.

To all Persons to whom these Presents may come, (*name of releaser*) widow, relict and residuary legatee of late of , deceased, sendeth greeting. Whereas the said , in and by his last will and testament, duly signed, sealed, published, and declared in my presence and with my approbation, bearing date , did settle and secure unto and upon me the said , an annuity of to be paid unto me half-yearly, by equal payments, in lieu and full satisfaction of the dower or thirds at common law, which I might otherwise have, claim, or be entitled unto, out of all and every the lands, tenements, and hereditaments whatsoever, of my said late husband, deceased, or of, in, to, or out of the reversion or remainder, rents, issues, and profits thereof: Now know ye, that I the said for and in consideration of the said annuity so secured to me as aforesaid, and in pursuance and part performance of the said last will and testament of my said late husband, do hereby declare myself fully satisfied and contented therewith, and do hereby remise, release, and forever quit-claim unto of , and of , trustees, appointed in and by the said last will and testament of my said late husband (in their actual possession and seisin now being) their executors all and all manner of dower in and to the said premises, but thereof and therefrom, shall be utterly debarred and excluded, forever, by these presents.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(61.)

A Release of Dower where the Husband of the Widow joins in the Deed.

Know all Men by these Presents, That (*name of husband*) of and (*name of wife*) his wife, in her right, in consideration of paid them by of the receipt whereof they hereby acknowledge, have granted, remised, released, and forever quit-claimed, and by these presents do unto the said his heirs and assigns forever, all the right which the said hath to dower or thirds, of and in (*here *describe the estate*) whereof her late husband (*name of former husband*) late died seized, situate, , which she claims as of the endowment of the said deceased, and all the right, title, interest, and claim whatsoever, which the said and have, or either of them hath, or by law might have, of, in, and to the same : To have and to hold the same to the said and his heirs and assigns forever; and the said and for themselves, their heirs, executors, and administrators, do hereby covenant with the said and his heirs and assigns, that he and they shall henceforth forever, have and quietly enjoy the released premises, without any claim or demand had or made, or to be had or made by them, or any persons, claiming, or who may claim the same or any part thereof, by, from, or under them or their heirs.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(62.)

A Release of a Trust.

To all to whom these Presents may come, (*name of releaser*) sendeth greeting. Whereas, by indenture bearing date , made between (*here recite the deed*) in which said indenture the said doth hereby declare, that his name was only used in trust, for the benefit and behoof of of : Now know ye, that I, the said , in discharge of the trust reposed in me, at the request of the said , have remised, released, and surrendered, assigned, and set over, and by these presents, for me, my executors and administrators, do freely and absolutely remise, unto the said his executors all the estate, right, title, interest, use, benefit, privilege, and demand whatsoever, which I the said have, or may have or claim, of, or to the said premises, or of and in any sum of money, or other matter or thing whatsoever, in the said indenture contained, mentioned, and expressed, so that neither I the said my executors or administrators, or any of us, at any time hereafter, shall or will ask, claim, challenge, or demand any interest or other thing, in any manner whatsoever, by reason or means of the said indenture, or any covenant therein contained, but thereof and therefrom, and from all actions, suits, and demands, which I, my executors, administrators, or assigns, may have concerning the same, shall be utterly excluded and forever debarred, by these presents.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(63.)

A Release of Right to Lands.

Know all Men by these Presents, That I (*name of releaser*) of , in consideration of to me paid by (*name of releasee*) the receipt , have remised, released, and forever quit-claimed, and by these presents do unto the said and his heirs, all the estate, right, title, interest, use, trust, claim, and demand whatsoever, both at law and in equity, which I the said have, of, in, to, or out of, all and singular the following described parcel of land (*here describe the land*) so that neither I the said , my heirs or assigns, or any other person or persons in trust for me or them, or in my or their name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereafter have, claim, challenge, or demand, any right, title, or interest, property, claim, and demand, of, in, to, or out of the same , or any of them, or any part thereof, but that I the said , my heirs, and assigns, and every of them, from all estate, right title, interest, property, claim, and demand, of, in, to, or out of the said or any of them, or any part thereof, are, is, and shall be, by these presents forever excluded and debarred.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

(64.)

A Release between two Traders on Settling Accounts.

Whereas sundry accounts, current and otherwise, and divers dealings in trade have been subsisting for a long time past between of trader, and of trader, which said accounts and dealings, the said and have balanced and adjusted, whereby it appears that nothing remains due from the one to the other; and whereas, therefore, to prevent any future disputes concerning the said accounts and dealings, and to confirm the said adjustment, the said and have mutually agreed to give reciprocal releases from each other. Now know all men by these presents, that the said (*one of the parties*) (for the consideration abovesaid, and to prevent all future disputes) for himself, his executors, and administrators, doth remise, release, and forever quit-claim unto the said (*the other party*) his all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, extents, executions, claims and demands whatsoever, both at law and in equity which against the said his the said now hath or ever had, on account of their said mutual dealings, or for or by reason of any other cause, matter, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

And the said (*the other party*) (for the consideration abovesaid, and to prevent all future disputes) for himself, his executors, and administrators, doth remise, release, and forever quit-claim unto the said (*the other party*), his all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, damages, extents, executions, claims, and demands whatsoever, both at law and in equity, which against the said his the said now hath or ever had, on account of their said mutual dealings, or for or by reason of any other cause, matter, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In Witness Whereof, we have hereunto set our hands and seals, this day of in the year

(*Signatures.*) (*Seals.*)

In Presence of

CHAPTER XVI.

NOTES OF HAND AND BILLS OF EXCHANGE, DRAFTS, AND CHECKS.

SECTION I.

THE PURPOSE OF, AND THE PARTIES TO, SUCH PAPERS.

THESE instruments are usually negotiable. By *negotiable* paper is meant evidence of debt which may be transferred by indorsement or delivery, so that the transferee or holder may sue the same in his own name, and as if it had been made to him originally; or, in other words, it means paper, that is, bills of exchange or promissory notes, or drafts, or checks. payabl to the order of a payee, or to bearer.

The rules of law on the subject of negotiable paper are more exact and technical than those of any other department of Mercantile Law. They reach, on many points, an extreme nicety, which makes it difficult to express them intelligibly to persons who do not already possess some familiarity with the subject. All difficulty of this kind could have been easily avoided by me by omitting any notice of these nice points. But it was thought better to mention them, one and all, for these are the things an intelligent man of business should know: and although the rules stated, especially those in reference to presentment, demand, notice, and some other subjects, may seem to be intricate and difficult, they require, it is believed, only careful consideration to be fully understood.

Where and when bills of exchange were invented is not certainly known. They were not used by any ancient nations, but have been employed and recognized by most commercial nations for some centuries. A still more recent invention is the promissory negotiable note, which, in this country, for inland and domestic purposes, has taken the place of the bill of exchange very generally. Besides these two, bills of lading, and some other documents, have a kind of negotiability, but it is quite imperfect. The utility of bills and notes in commerce, arises from the fact that they represent money, which is the representative of the market value of everything; and many of the peculiar rules respecting negotiable paper are derived from this representation, and intended to make it adequate and effectual.

A negotiable bill of exchange is a written order whereby A orders B to pay to C *or his order*, or *to bearer*, a sum of money absolutely and at a certain time.

(65.)

Common Form of a Bill of Exchange.

$ NEW YORK, January , 19 .
days (or months) after sight, (or At sight.) pay to the order of
C dollars. Value received, and charge the
same to account of

(Signed) *A*

To B

A is the Drawer, B the Drawee, and C the Payee. If the bill is presented to B, and he agrees to obey the order, he "accepts" the bill, and this he does in a mercantile way by writing the word "Accepted" across the face of the bill, and also writing his name below this word; then the Drawee becomes the Acceptor. If C, the payee, chooses to transfer the paper and all his rights under it to some other person, h may do this by writing his name on (usually across) the back this is called Indorsement, and C then becomes an Indorser. The person to whom C thus transfers the bill is an Indorsee. The indorsee may again transfer the bill by writing his name below that of the former Indorser, and the Indorsee then becomes the second Indorser; and this process may go on indefinitely. If the added names cover all the back of the note, a piece may be wafered on to receive more. In France, this added piece is called "*allonge*," and this word is used in some law-books, but not by our merchants.

Promissory notes of hand are written in many ways, which, however, differ only in the different words in which they express the same thing. We will first give the full Form of a technically accurate note, and afterwards of the more usual Forms:

(66.)

NEW YORK, January 5, 1900.

For value received, I promise John Smith to pay to him or to his order, one thousand dollars in three months from this day, with interest from date.

HENRY SIMMONS.

But promissory notes are seldom, if ever, written in this way in practice. They are shortened and simplified in a great variety of ways, mercantile usage having given a meaning to expressions which the law accepts and enforces. Some of the more common forms in use are as follows:

\$1,000 $\frac{50}{100}$. NEW YORK, January 5, 1900.

Three months after date, I promise to pay to the order of John Smith, one thousand $\frac{50}{100}$ dollars, at the North River Bank, value received.

HENRY SIMMONS.

If it is intended that more than one person shall be liab on the note, the following is a customary form:

\$1,000 $\frac{50}{100}$. NEW YORK, January 5, 1900.

Value received, we jointly and severally promise to pay to Robinson, Wellman & Co., or order, one thousand $\frac{50}{100}$ dollars in three months from date.

"With interest" may be added if that is agreed upon, otherwise it bears no interest until after it is due. So it may be "on demand," in which case it bears no interest until after demand is made; "after date" or "from date," should be written, although the law would supply these words.

If the note be signed by more than one person, all the signers, whether the note says "I promise" or "We promise," are liable jointly; but in the latter case only jointly and not jointly and severally unless the note says so.

Generally speaking, notes are not made payable at any particular place. But they may be made payable at any bank, or the promisor's own house or office, or wherever else he chooses. The effect of making a note payable at a certain place is this: In this country neither a promissory note nor a bill of exchange, drawn payable at a certain place, nor a bill accepted payable at a certain place, need be presented at that place in order to sustain an action against the *maker* of a note or the *acceptor* of the bill; but he may show, by way of defence, that he was ready at that place with funds to pay the note or bill, and then he will escape all damages and interest. And if he can show a positive loss from the want of such presentment, — as, for instance, by the subsequent failure of a bank where he had placed funds to meet the note or bill, — he will be discharged from his liability on the paper to the amount of the loss. But the drawees of the bill and the indorsers of the bill or note are discharged by a neglect to demand payment at such specified place.

In some States, Indiana, for example, it is customary to add "without relief from valuation and appraisement laws"; and also, "if the note is not paid at maturity five per cent. shall be added and collected as attorney's fees."

If the note be secured by mortgage, coupon notes are sometimes attached, each of which is for six months' interest; and also a power of attorney to some attorney to confess judgment. We give below a full Form for such additions to a note of hand, given in Chicago to a lender in Boston:

$2,000. CHICAGO, ILLINOIS, May 8th, 1900.

Three (3) years after date, for value received, I promise to pay to or order, the principal sum of Two

Thousand Dollars, with interest thereon at the rate of Ten (10) per cent. per annum, payable semi-annually, on the 8th days of November and May, in each and every year until said principal sum is fully paid, both principal and interest payable at the office of ,
Boston, Massachusetts.

The several installments of interest aforesaid for said period of Three (3) years are further evidenced by Six (6) interest notes of even date herewith.

And I agree that if default be made on the payment of any one of the interest installments at the time and place the same become due as above, and if said default shall continue for twenty days thereafter, then if the legal holder or holders of the principal note shall so elect, at any time after said twenty days, the principal sum of Two Thousand Dollars shall at once and without notice of such election made, become due and payable.

This note is secured by Trust Deed.

Know all Men by these Presents, That whereas I, the subscriber, am justly indebted upon a certain Promissory Note of even date herewith, due in Three (3) years after date to
or order, for the sum of Two Thousand (2,000) Dollars, with interest at the rate of Ten (10) per cent. per annum, payable semi-annually on the Eighth (8th) days of November and May, in each and every year until said principal sum is paid, and interest evidenced by Six (6) Interest Coupon Notes of even date, both principal and interest payable at the office
Boston, Massachusetts.

And whereas the said principal note contains an agreement that if default be made in the payment of any one of the interest installments at the time and place the same becomes due, and if the said default shall continue for twenty days thereafter, then, if the legal holder or holders of said principal note shall so elect at any time after said twenty days, the principal sum of Two Thousand (2,000) Dollars shall at once, and without notice of election made, become due and payable.

Now Therefore, in consideration of the premises, I do hereby make, constitute, and appoint , or any Attorney of Court of Record, to be my true and lawful attorney irrevocably for me in my name, place, and stead, to appear in any Court of Record in term-time or vacation, in any of the States or Territories of the United States, at any time after said note, according to its tenor therein set forth, or the interest thereon becomes payable, to waive service of process, accept a declaration and confess judgment in favor of the said
or his assigns upon said note for the sum of Two Thousand (2,000) Dollars and interest unpaid, at the rate therein mentioned, up to the day of said judgment, together with costs and Thirty (30) Dollars attorney's fees. And also to file a cognovit for the said amount and interest, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, or any Bill of Equity filed to

interfere with the operation of said judgment, and to release all errors that intervene in the entering up of said judgment or issuing execution thereon, and to consent to immediate execution upon said judgment. Hereby ratifying and confirming all that my said Attorney may do by virtue hereof.

Witness my hand and seal, this Eighth (8th) day of May, A. D. one thousand nine hundred

In Presence of

CHICAGO, ILLINOIS, May 8th, 1900.

Due to or order, One Hundred Dollars on the 8th day of November, A. D. 1900, without grace, at the office of , Boston, Massachusetts, with interest at the rate of ten per cent. per annum after maturity, being for an installment of interest due on that day upon my principal promissory note of even date herewith, payable to or order, three (3) years after its date, for the sum of Two Thousand (2,000) Dollars secured by trust deed.

In consideration of the premises, I do hereby make and appoint or any other Attorney of any Court of Record in the United States of America, to be my true and lawful Attorney for me in my name, place, and stead, to appear in any Court of Record in term-time or vacation, in any State, District, or Territory of the United States, at any time after this interest coupon becomes due, to waive service of process, accept a declaration, and confess a judgment in favor of the legal holder hereof for the amount due and unpaid hereon, with interest as aforesaid to the day of entering such judgment, together with costs, and twenty dollars for the attorney's fee, and to file a cognovit for such amounts, with an agreement therein that execution may issue forthwith, and that no writ of error or appeal shall be prosecuted upon such judgment, nor any Bill in Equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment and issuing the execution thereon.

Hereby ratifying and confirming all that my said attorney may do by virtue hereof.

No protest.

Five other coupon notes for interest are added.

It is quite important to have a clear idea of the difference between the parties to a note, and the parties to a bill of exchange. If A makes a note to B, then A promises to pay, and is the promisor, and B is the promisee, or payee. But if it be payable to B or order, B may write his name across the back, that is, may indorse it, and is an indorser. And if he directs, over his signature on the back, that the note be paid to any person in particular, such payee is now an indorsee. But when a bill is drawn, nobody promises, in words, to pay it. A orders B to pay to C. If B, when requested, says he will not do as ordered, the law supposes A, the drawer, to have promised that he would pay if B did not. If B "accepts," the law now supposes that B promises C to pay the bill to him. Now B, being the acceptor, is held by the law just as a maker of a note is, because he is supposed to have promised in the same way. A, the drawer, is held just as the first indorser of a note is held, because he is supposed to have promised to pay if B did not. If the bill was negotiable, that is, payable to C, or his order, then C may indorse the bill, and although his name is the only one on the back of the bill, he is treated in law only as second indorser, because the drawer is bound in the same way as a first indorser. And if D then puts his name below C's, he is treated as third indorser, and so on. For the rights, obligations, and duties of all these parties, see the subsequent sections.

We repeat, that a negotiable promissory note is a written promise to pay to a certain person or his order, or to bearer, at a certain time, a certain sum of money; and he who signs this is called the Maker or the Promisor; the other party is the Promisee or Payee. The payee of such a note has the same power of indorsement as the payee of a bill of exchange. If the note be not payable "to order," nor to "bearer," it is then not negotiable; these words "or order" or "to bearer" being the words which make it negotiable. The maker of a negotiable note holds, as has been said, the same position as the acceptor of a bill, the drawer the same as the first indorser of a note: that is, a party holding a note and seeking payment of it looks first to the maker, and then to the indorser; one holding a bill looks first to the drawee or acceptor, and, on his failure, to the drawer.

Neither indorsement, nor acceptance, nor making, is complete until delivery and reception of the bill, or note, or acceptance; and a defendant may show that there was no legal delivery of the paper.

The law of negotiable paper first defines a bill or note, and determines what instruments come under these names, and then describes and ascertains the duties and obligations of all the parties we have named above. We shall follow this order.

SECTION II.

WHAT IS ESSENTIAL TO A NEGOTIABLE NOTE OR BILL.

A WRITTEN order or promise may be perfectly valid as a written contract or promise, but, although made "to order," will not be *negotiable*, unless certain requisites of the law-merchant are complied with.

The difference between a note that is negotiable and one that is not, is very important in many respects. One of these is as to the operation of the trustee process, or foreign attachment, or garnishee process, as it is sometimes called. If A owes B a hundred dollars, C, a creditor of B, may *trustee* A and A must then pay to C what he owes to B. And this is so, even if A have given his note to B for the hundred dollars, if the note be *not negotiable*, that is, not to B or order, unless A has actual notice that the note has been assigned for value to a third person. But if the note be negotiable and not overdue, A cannot be trusteed. The reason is, that if he is obliged to pay the money to C, and B should indorse the note to D for value, and D take it honestly, A must pay the note to D, and so would have to pay it twice. But if the note is not negotiable, B cannot indorse it, and A is safe in paying the money over.

1. THE PROMISE MUST BE ABSOLUTE AND DEFINITE.—The promise of the note, and the order of the bill, must be absolute. Words expressive of intention only do not make a promissory note, and a mere request without an order does not make a bill of exchange. But no one word, and no set of words, are absolutely necessary, for if from all the language the distinct promise or positive order can be inferred, that is sufficient.

The time of payment is usually written in a bill or note; if not, it is payable on demand. The time of payment must not depend on a contingency. In fact, any contingency apparent on the face of the instrument prevents it from being a negotiable note; and the happening of the contingency does not cure it. And the payment promised or ordered must be of a definite sum of money.

A negotiable bill of exchange or promissory note must be payable in money only, and not in goods or merchandise, or property of any kind, or by the performance of any act. If payable in "current funds," or good "bank-notes," or "current bank-notes," this should not be sufficient on general principles; some courts, however, construe this as meaning notes convertible on demand into money, and therefore as the same thing as money, and call the note negotiable.

A bill or note may be written upon any paper or proper substitute for it, in any language, in ink or pencil. A name may be signed or indorsed by a mark; and, though usually written at the bottom, it may be sufficient if written in the body of the note; as, "I, A B, promise," &c.; unless it can be shown that the note was incomplete, and was intended to be finished by signature. If not dated, it will be considered as dated when it was made; but a written date is *primâ facie* evidence (this means evidence which may be overcome by opposite and better evidence, but until so overcome is sufficient) of the time of making. The amount is usually written in figures at the corner or bottom. If the sum is written at length in the body, and also in figures at the corner, the written words control the figures, and evidence is not admissible to show that the figures were right and the words inaccurate. But in an American case, a promissory note, expressed to be for "thee hundred dollars," and in figures in the margin, $300, was held to be a good note for three hundred dollars, if the maker when he signed it intended "three" when he wrote "thee;" and whether such was his intention was a question for the jury. And the omission of such a word as "dollars," or "pounds," or "sterling," may be supplied, if the meaning of the instrument is quite clear.

It has been just said that any contingency apparent on the face of the instrument prevents it from being a *negotiable* note. Hence it is not safe to write in the body of the note, or in connection with the promise, any condition or contingency. But, if what is so written in no way affects the promise itself, the note may still be negotiable.

Thus, in some parts of this country, persons who sell a machine, or other thing, on a credit, sometimes take a promissory note payable to the seller *or order*, and containing an additional clause, providing, that, until the note is paid, the property in the thing sold (or the ownership of it) shall be and remain in the seller. Such notes are often made in the following form:

(67.)

Form of a Note given for a Chattel sold, with a Condition preserving the Ownership of the Seller.

$ *(Place and date)* 19

On the day of 19 I
of , County of and State of
promise to pay , or order dollars at the First National
Bank in with interest at per cent. per annum until paid. And
it is further agreed that the title to the *(reaper)* for which this note is given shall
remain in said *(the seller)* until this note is fully paid.

Value received

(Witness.) *(Signature.)*

On the back of this note is sometimes the following statement:

Statement made for the Purpose of obtaining Credit.

I own acres of land in my own name in the Town of
County of and State of which is worth at a fair
valuation, $

It is not incumbered by mortgage or otherwise, except the amount of
$, and the title is perfect in me in all respects. I have stock and
personal property to the amount of $ over and above my debts
and liabilities.

The above property being worth over and above my debts, liabilities, and exemptions at least FIVE TIMES the amount of the within note.

The question has arisen whether such a note is negotiable Suppose the seller of the chattel, who is payee of the note, sells the note and indorses it for value to an innocent indorsee; then the buyer finds that he was cheated, and puts in this defence of fraud when he is sued on the note by the indorser. He can make this defence if this note be *not negotiable;* but he cannot make it if it be *negotiable.* I should say it was negotiable; and that the only effect of the condition or provision annexed to the promise, was, that it operated much as a mortgage of the thing, by the buyer, back to the seller, to secure the payment. In some States such a note must be recorded like a chattel mortgage.

2. THE PAYEE MUST BE DESIGNATED.—The payee should be

distinctly named, unless the bill or note be made payable to bearer. If it can be gathered from the instrument, by a reasonable or necessary construction, who is the payee, that is enough. The note may be made payable to the promisor or his order; that is, a man may say, I promise to pay to my own order; and such note is nothing until the promisor not only signs it, but indorses it.

A note indorsed in blank is always transferable by delivery, just as if it were made payable to bearer; because any holder may write over the indorsement an order to pay to himself. Indorsements are either *indorsements in blank*, by which is meant the name of the indorser and nothing more, or *indorsements in full*, which are so called when over the name of the *indorser* is written, "pay to A B." (By A B we mean the name of the person to whom the note or bill is indorsed.) These two kinds of indorsements are fully explained subsequently in section VI. of this chapter. A note to the order of the promisor himself, and indorsed by him in blank, is therefore much the same thing as a note to bearer. But it is quite commonly used in our mercantile cities, because the holder can always pass it away without indorsing if he chooses, or can put his name on it as second indorser if he likes to. If the indorsee be named, and the note get into the possession of the wrong person of the same name, this person neither has nor can give a title to it. If the name be spelt wrong, evidence of intention is receivable. If a father and son have the same name, and either of them has possession of the note and indorses it, this would be evidence of his rightful ownership.

If neither payable to bearer, nor to the maker's or drawer's order, nor to any other person, it would be an incomplete and invalid instrument.

A note to a fictitious payee, with the same name indorsed by the maker, would undoubtedly be held to be the maker's own note, either payable to bearer, or to himself or order, by another name, and so indorsed. If a blank be left in a bill for the payee's name, a *bonâ fide* holder may fill it with his own, the issuing of the bill in blank being an authority to a *bonâ fide* holder to insert the name. And if the name of the payee be not the name of a person, as if it be the name of a ship, the instrument is payable to bearer. A note payable to different persons in the alternative, that is, to one or the other of them, is not a good promissory note. A bill or note "to the order of" any person is the same as if to him "or his order," and may be sued by him without indorsement.

3. OF AMBIGUOUS AND IRREGULAR INSTRUMENTS.—The law in relation to protest and damages makes it sometimes important to distinguish between a promissory note and a bill of exchange, because, by law, a foreign bill of exchange, if unpaid, should be protested, but not a promissory note; but it is a common practice to protest promissory notes when they are not paid. The rule in general is, that, if an instrument be so ambiguous in its terms that it cannot be certainly pronounced one of these to the exclusion of the other, the holder may elect and treat it as either. As if written, "Value received, in three months from date, pay the order of H. L. $500. (Signed) A. B.;" and an address or memorandum at the bottom, "At Messrs. E. F. & Co."

4. OF BANK-NOTES.—Bank-notes or bank-bills are promissory notes of a bank, payable to bearer; and, like all notes to bearer, the property in them passes by delivery. They are intended to be used as money; and, while a finder, or one who steals them, has no title himself against the owner, still, if he passes them away to a *bonâ fide* holder, that is, a holder for value without notice or knowledge, such owner holds them against the original owner. And if the bank pays them in good faith on regular presentment, the owner has no claim. They pass by a will bequeathing money. They are a good tender, unless objected to at the time because not money. Forged bills, given in payment, are a mere nullity. Bills of a bank which has failed, but of which the failure is unknown to both parties, are now, generally, put on the footing of forged or void bills. But if the receiver of them, by holding them, and by a delay of returning or giving them up, injures the payer and impairs his opportunity or means of idemnity, the receiver must then lose them.

5. OF CHECKS ON BANKS.—A check on a bank is undoubtedly a bill of exchange; but usage and the nature of the case

have introduced some important qualifications of the general law of bills in its application to checks. A check requires no acceptance, because a bank, after a customary or reasonable time has elapsed since deposit, and while still in possession of funds, is bound to pay the checks of the depositors. The drawer of a check is not a surety, as is the drawer of a bill, but a principal debtor, like the maker of a note. Nor can a drawer complain of any delay whatever in the presentment; for it is an absolute appropriation, as between the drawer and the holder, to the holder of so much money in the banker's hands; there it may lie at the holder's pleasure. But delay is at the holder's risk; for if the bank fails after he could have got his money on the check, the loss is his. If the bank before he presents his check pay out all the money of the drawer on other checks, he may then look to the drawer.

If one who holds a check as payee, or otherwise, transfers it to another, he has a right to insist that the check shall be presented in the course of the banking hours of that day, or at farthest the next; that is, he is not responsible for the failure of the bank to pay, unless it is so presented, provided it would then have been paid. And if the party receiving the check live elsewhere than where the bank is, it seems that he should send it for collection the next day; and if to an agent, the agent should present it, at latest, in the course of the day after he received it. If the check be drawn when the drawer neither has funds in the bank, nor has made any arrangement by which he has a right to draw the check, the drawing it is a fraud, and the holder may bring his action at once against the drawer, without presentment or notice.

Checks are seldom accepted. But they are often marked by the bank as good, and this binds the bank as an acceptor.

Checks are often payable to bearer, but more frequently are drawn payable to a payee or his order; for this guards against loss or theft, because the check will not be paid unless the payee writes his name on it; and it gives to the drawer, when the check is paid and returned by the bank to him, what is the same as the receipt of the payee. Generally, a check is not payment until it is cashed; then it is payment if the money was paid to the creditor, or the check had passed through his hands. A bank cannot maintain a claim for money lent and advanced, merely by showing the defendant's check paid by them, because the general presumption is, that the bank paid the check because it was drawn by a depositor against funds.

While the death of a drawer countermands his check, if the bank pay it before notice of the death reaches them, they are discharged. This would seem to be almost a necessary inference from the general purpose of banks of deposit, and the use which merchants make of them.

If a bank pay a forged check, it is so far its own loss, that the bank cannot charge the money to the depositor whose name was forged. But the bank could recover the money back from one who presented a forged check, and was paid, provided the payee, if innocent, loses no opportunity of indemnity in the meantime, and can be put in as good a position as if the bank had refused to pay it. But if somebody must lose, the bank should, because it is the duty of the bank to know the writing of its own depositors. If it pay a check of which the amount has been falsely and fraudulently increased, it can charge the drawer only with the original amount. But if the drawer himself causes or facilitates the forgery, as by so carelessly writing it, or leaving it in such hands, that the forgery or alteration is easy, so that it may be called his fault, and the bank is innocent, then the the loss falls on the drawer. If many persons, not partners, join in a deposit, they must join in a check; but if one or more abscond, a court of equity will permit the remainder to draw the money.

6. Of Accommodation Paper.—An accommodation bill or note is one for which the acceptor or maker has received no consideration, but has lent his name and credit to accommodate the drawer, payee, or holder. Of course he is bound to all other parties, precisely as if there were a good consideration; for, otherwise, it would not be an effectual loan of credit. But he is not bound to the party whom he thus accommodates; on the contrary, that party is bound to take up the paper, or to provide the accommodation acceptor, or maker, or indorser, with funds for doing it, or to indemnify him for taking it up. And if, before

the bill or note is due, the party accommodated provides the party lending his credit with the necessary funds, he cannot recall them; and if he becomes bankrupt, they remain the property of the accommodation acceptor, or maker, who, if sued on the bill or note, can charge the party accommodated with the expense of defending the suit, even if the defence were unsuccessful, if he had any reasonable ground of defence, because the defence was for the benefit of the party accommodated; inasmuch as he must repay the accommodation party if he pays the bill or note.

7. OF FOREIGN AND INLAND BILLS.—Bills of exchange may be foreign bills, or inland bills. Foreign bills are those which are drawn or payable in a foreign country; and for this purpose, each of our States is *foreign* to the others. Inland bills are drawn and payable at home. Every bill is, on its face, an inland bill, unless it purports to be a foreign bill. If foreign on its face, evidence is admissible to show that it was drawn at home. If a bill be drawn and accepted here, but afterwards actually signed by the drawer abroad, it is a foreign bill. If a foreign bill be not accepted, or be not paid at maturity, it should at once be protested by a notary public. Inland bills are generally, and promissory notes frequently, protested; but this is not generally required by the law. The holder of a foreign bill, after protest for non-payment, or for non-acceptance, may sue the drawer and indorser, and recover the face of the bill, and, in addition thereto, his damages, which damages on protest are generally adjusted in this country by various statutes,—which give greater damages as the distance is greater; and an established usage would supply the place of statutes if they were wanting.

8. OF THE LAW OF PLACE.—The different States of the Union are, as to questions arising under Mercantile Law, *foreign countries as to each other.* Important questions sometimes arise in the case of foreign bills (as well as in some other cases), dependent upon what is called the Law of Place, the Latin phrase for which, *Lex Loci*, is often used. In general, every contract is to be governed by the law of the place where it is made. Thus, if a bill is drawn in France, and there

indorsed in a way which is sufficient here, but insufficient there, the indorsement would here be held void. But if a contract entered into in one place is to be performed in another, as in the case of a note dated, or a bill drawn, in one State, but payable in another, the prevailing rule is, that the law of the place where the note is payable construes and governs the contract. Therefore, if a bill be drawn in England, payable in France, the protest and notice of dishonor must be regulated by the law of France. But one who makes such a note may elect, for many purposes, which law shall govern it. Thus, if he makes it in New York, and it is payable in Boston, he may promise to pay the legal interest of New York, and will be bound to this payment in Boston, although the legal interest in Boston is less; but if there be no such express promise, the interest payable will be that of the place where the note is payable.

While the law of the place of the contract interprets and construes it as a debt, the law of the place where it is put in suit — which is called the Law of the Forum, or Court — determines all questions as to remedy; that is, all questions which relate to the legal means of recovering the debt. Thus, in general, the statutes of limitation of the place of the court are applied. But if a cause of action relating to any special subject-matter which has a definite location, as a parcel of land has, be barred by a statute of limitations where the subject-matter is situated, it is barred everywhere. A promisor, not subject to arrest in the country where the note is made, may be arrested under the laws of the country where the note is sued.

It will always be presumed, in the absence of testimony, that the law of a foreign country is the same with that of the country in which the suit is brought. If a difference in this respect is a ground of defence, or of action, it must be proved by evidence.

SECTION III.

THE CONSIDERATION OF NEGOTIABLE PAPER.

1. Exception to the Common Law Rule, in the Case of Negotiable Paper.—By the common law of England and of this country, as we have seen, no promise can be enforced

unless made for a consideration, or unless it be sealed. But bills and notes payable to order, that is, negotiable, are, to a certain extent an exception to this rule. Thus, an indorsee cannot be defeated by the promisor showing that he received no consideration for his promise; because the promisor made an instrument for circulation as money; and it would be fraudulent to give to paper the credit of his name, and then refuse to honor it. But as between the maker and the payee, or between indorser and indorsee, and, in general, between any two *immediate* parties, the defendant may rely on the want of consideration; that is, if an indorsee sues the maker, and the maker says he had no consideration for the note, this is no defense; but if the indorsee sues his indorser, and the indorser shows that the indorsee paid him nothing, this would be a good defense; and so it would be if the payee sued the maker. So, if a distant indorsee has notice or knowledge, when he buys a note, that it was made without consideration, he cannot recover on it against the maker, unless it was an accommodation note, or was intended as a gift.

Thus, if A, supposing a balance due from him to B, gives B his negotiable note for the amount, and afterwards discovers that the balance is the other way, B cannot recover of A; nor can any third or more distant indorsee who knows these facts before buying the note. But if A gives B his note wholly without consideration, for the purpose of lending him his credit, or for the purpose of making him a gift to the amount of the note, and C buys the note with a full knowledge of the facts, he will nevertheless hold A, although B could not. If the note was bought honestly for a fair price, the buyer should recover its whole amount. Every promissory note *imports* a consideration; that is, none, in the first place, need be proved; but when want of consideration is relied on in defence, and evidence is given on one side and the other, the burden of proof is on the plaintiff to satisfy the jury that consideration was given.

If an endorser, sued by an indorsee, shows that the note was originally made in fraud, he may require the holder to prove that he paid consideration; but if this be proved, he must pay the whole of the note, unless he was himself defrauded by the holder. And if an accommodation note be discounted in violation of the agreement of the party accommodated, the holder can still recover, provided he received the note in good faith, and for valuable consideration.

2. Of "Value Received."—"Value received" is usually written, and therefore should be; but is not necessary. If not written, it will be presumed by the law, or may be supplied by the plaintiff's proof. If expressed, it may be denied by the defendant, and disproved. And if a special consideration be stated in the note, the defendant may prove that there was no consideration, or that the consideration was different. If "value received" be written in a note, it means received by the maker from the payee; if the note be payable to the bearer, it means received by the maker from the holder. In a bill, "value received" means that the value was received from the payee by the drawer. But if the bill be payable to the drawer's own order, then it means received by the acceptor from the drawer.

3. What the Consideration may be.—A valuable consideration may be either any gain or advantage to the promisor, or any loss or injury sustained by the promisee at the promisor's request. A previous debt, or a fluctuating balance, or a debt due from a third person, might be a valuable consideration. So is a *moral* consideration, if founded upon a previous legal consideration; as, where one promises to pay a debt barred by the statute of limitations, or by infancy. But a *merely* moral consideration, as one founded upon natural love and affection, or the relation of parent and child, is no legal consideration.

No consideration is sufficient in law if it be *illegal* in its nature; and it may be illegal because, first, it violates some positive law, as, for example, the Sunday law, or the law against usury. Secondly, because it violates religion or morality, as an agreement for future illicit cohabitation, or to let lodgings for purposes of prostitution, or an indecent wager; for any bill or note founded upon either of these would be void. Thirdly, if distinctly opposed to public policy; as an agreement in restraint of trade, or injurious to the revenue, or in restraint of marriage, or for procurement of marriage, or suppressing evidence, or withdrawing a prosecution for felony or public misdemeanor.

SECTION IV.

THE RIGHTS AND DUTIES OF THE MAKER.

The maker of a note or the acceptor of a bill is bound to pay the same at its maturity, and at any time thereafter, unless the action be barred by the statute of limitations, or he has some other defence under the general law of contracts. As between himself and the payee of the note or bill, he may make any defences which he could make on any debt arising from simple contract; as want or failure of consideration; payment in whole or in part; set-off; accord and satisfaction; or the like. The peculiar characteristics of negotiable paper do not begin to operate, so to speak, until the paper has passed into the hands of third parties. Then, the party liable on the note or bill can make none of these defences, unless the time or manner in which it came into the possession of the holder lays him open to these defences. But the law on this subject may better be presented in our next section.

SECTION V.

THE RIGHTS AND DUTIES OF THE HOLDER OF NEGOTIABLE PAPER.

1. What a Holder may do with a Bill or Note.—An indorsee has a right of action against all whose names are on the bill when he received it. And if one delivers a bill or note which he ought to indorse and does not, the holder has an action against him for not indorsing, or may proceed in a court of equity to compel him to indorse. If a bill comes back to a previous indorser, he may strike out the intermediate indorsements and sue in his own name, as indorsee; but he has, in general, no remedy against the intermediate parties, because, if he made them pay as indorsers to him, they would make him pay as indorser to them. If, however, the circumstances are such that *they*, if compelled to pay, would have no right against him as an indorser to them, as, for example, if he indorsed it "without recourse," then he may have a claim against them.

The holder of a bill indorsed and deposited with him for collection, or only as a trustee, can use it only in conformity with the trust. And if the indorsement express that it is to be collected for the indorser's use, or use any equivalent language, this is notice to any one who discounts it; and the party discounting the paper against this notice will be obliged to deliver the note, or pay its contents, if collected, to the indorser. Thus, Mr. Sigourney, a merchant in Boston, remitted to Williams, a London banker, for collection, a bill of exchange indorsed by him, and over his name was written, "Pay to Williams or order for my use." Williams had the bill discounted for his own benefit by his bankers, and failed; and the English court held that the indorsement showed that the bill did not belong to Williams, and that the discounters had no right to discount it for him; and they were obliged to pay the amount of it to Sigourney.

2. OF A TRANSFER AFTER DISHONOR OF NEGOTIABLE PAPER.—So long as a note remains due, everybody has a right to believe that it has not been paid, and will be paid at maturity, and may purchase it in that belief. But as soon as it is overdue, the date shows it, and every person must know that it is either paid, and so extinguished, or that it has not been paid, and therefore is dishonored, and that there may be good reasons why it was not paid, or good defences against it. He therefore now takes it at his own peril; and therefore a holder who took the note after it became due is open to many of the defences which the promisor could have made against the party from whom the holder took it; because, having notice that the bill or note is dishonored, he ought to have ascertained whether any, and, if so, what defence could be set up.

So, too, if an indorsee takes the note or bill *before* it is due, but with notice or knowledge of fraud or other good defence which could be made against his endorser if he sued it, it is a general rule that the same defence may be made against him.

A note payable on demand is considered as not overdue, unless very old indeed, without some evidence of demand of payment and refusal, but in some States this has been changed by statute. But it is not so with a check; for this should be presented without unreasonable delay.

3. OF PRESENTMENT FOR ACCEPTANCE.—It is most important to the holder of negotiable paper to know distinctly what his

duties are in relation to presentment for acceptance or payment, and notice to others interested in case of non-acceptance or non-payment.

It is always prudent for the holder of a bill to present it for acceptance without delay; for if it be accepted, he has new security; if not, the former parties are immediately liable; and it is but just to the drawer to give him as early an opportunity as may be to withdraw his funds or obtain indemnity from a debtor who will not honor his bills. And if a bill is payable at sight, or at a certain period after sight, there is not only no right of action against anybody until presentment, but, if this be delayed beyond a reasonable time, the holder loses his remedy against all previous parties. And although the question of reasonable time is generally one only of law, yet, in this connection, it is treated as so far a question of fact, that it is submitted to the jury. There is no certain rule determining what is reasonable time in this respect. If a bill of exchange be payable on demand, it is not like a promissory note, but must be presented within a reasonable time, or the drawer will be discharged. A holder may put a bill payable after sight into circulation, without presenting it himself; and in that case, if a subsequent holder presents it, a longer delay in presentment would be allowed than if the first holder had kept it in his own possession.

The presentment should be made during business hours; but in this country they extend through the day and until evening, except in the case of banks. Any distinct usage established where the presentment is made would probably be received in evidence, and permitted to affect the question.

Ill health, or other actual impediment without fault, may excuse delay on the part of the holder; but the request of the drawer to the drawee not to accept does not excuse non-presentment for acceptance.

Presentment for acceptance should be made to the drawee himself, or to his agent authorized to accept. And when it is presented, the drawee may have a reasonable time to consider whether he will accept, during which time the holder is justified in leaving the bill with him. And this time would be as much as twenty-four hours, unless the mail goes out before. And if the holder gives more than twenty-four hours for this purpose, or the mail goes out before, he should inform the previous parties of it. If the drawee has changed his residence, the holder should use due diligence to find him; and what constitutes due or reasonable diligence is a question of fact for a jury. And if he be dead, the holder should ascertain who is his personal representative, if he has one, and present the bill to him. If the bill be drawn upon the drawee at a particular place, it is regarded as dishonored if the drawee has absconded, so that the bill cannot be presented for acceptance at that place.

4. OF PRESENTMENT FOR DEMAND OF PAYMENT.—The next question relates to the duty of demanding payment; and here the law is much the same in respect both to notes and to bills.

The universal rule of the law-merchant is, that the indorsers of negotiable paper are supposed to agree to pay it *only* if the maker or previous indorsers do not, and *provided* due measures are taken by the holder to get it paid by those who ought, in the first place, to pay it. Every holder of negotiable paper can hold it as long as he likes, and not lose his claim against the *maker* of a note, or the *acceptor* of a bill, unless he holds it more than six years, and the Statute of Limitations bars his claim. The reason is, that the maker or acceptor promises *directly*, and not merely to pay if another does not. But every indorser of a note or bill, and every drawer of a bill, only promises to pay if a maker or acceptor or some previous indorser does not. If there is a bill of exchange with six indorsers, the last promises in law to pay it only if the acceptor, the drawer, and the five previous indorsers do not pay. He has therefore a right that a demand according to law should be made against every one of these persons, and that their refusal to pay should be notified to him, forthwith, so that he may secure himself if he can. And the law-merchant is very rigorous and precise in defining what demand should be made by the holder, and when and how demand should be made on every *prior* party, in order to hold any *subsequent* party; and also as to what notice of the demand and refusal of the *prior* party should be given to any *subsequent* party to whom the holder looks for payment.

A demand is sufficient if made at the usual residence or place of business of the payer, either of himself, or of an agent authorized to pay; and this authority may be inferred from the habit of paying, especially if the agent be a child, a wife, or a servant. The demand should not be made in the street, although a demand then would probably be held good, unless objected to at the time because made there. When a demand is made, the bill or note should be exhibited; and if lost, a copy should be exhibited, although this is not absolutely necessary. And when a payer calls on the holder, and declares to him that he shall not pay, and desires him to give notice to the indorsers, this constitutes a demand and refusal, provided this declaration be made at the maturity of the paper; but not if it was made before maturity, because the payer may change his intention.

Bankruptcy or insolvency of the payer is no excuse for non-demand; although the shutting up of a bank may be regarded as a refusal to all their creditors to pay their notes. Absconding of the payer is generally a sufficient excuse; but if the payer has shut up his house, the holder must nevertheless inquire after him, and find him, if he can by proper efforts. Even in case of absconding, it is always better to go through the formality of making a demand at the payer's last residence or place of business; and this is held necessary in Massachusetts. If the payer be dead, demand should be made at his house, unless he have personal representatives, and in that case, of them. And if the holder die, presentment should be made by his personal representatives; that is, by his executor or administrator.

If the drawer has no effects in the hands of the drawee, and has no arrangement or understanding which gives him a right to draw, non-presentation for payment is not a defence which he can make if sued on the bill.

Impossibility of presenting a bill for payment, without the fault of the holder, as the actual loss of a bill, or the like, will excuse some delay in making a demand for payment; but not more than the circumstances require. And the mere mistake of the holder as to the time, place, person, and manner, is no excuse, because he has no right to make mistakes to the injury of other people.

At common law all negotiable paper payable at a time certain is entitled to grace, which here means three days' delay of payment, unless it be expressly stated and agreed that there shall be no grace; and a presentment for payment before the last day of grace is premature, the note not being due until then. If the last day of grace falls on Sunday, or on a legal holiday, the note is due on the Saturday, or other day before the holiday. But if there be no grace, and the note falls due on a Sunday, or other holiday, it is not payable until the next day. At the close of the chapter we give an abstract of the laws of all the States concerning days of grace and holidays.

Generally, if a bill or note be payable in or after a certain number of days from date, sight, or demand, in counting these days, the day of date, sight, or demand is excluded, and the day on which it falls due included. And the law would supply the word "*from*," etc., if the word were not used. Thus, a note dated January 1, and payable in "twenty days," would be held payable in twenty days (and three days' grace) *after* the day of the date; that is, on the 24th. If a note is made payable in one or more months, this means calendar months, whether shorter or longer. If made on the 13th of December, and payable in two months, it is payable on the 13th of February and grace, that is, on the 16th. But if so many days are named, they must be counted, whether they are more or less than a month. Thus, if the above note were payable in sixty days, it would be due on the 11th and grace, or on the 14th of February. If dated 13th January, and payable in sixty days, it would be due on the 14th of March, with grace, or on the 17th.

Although payment must be demanded promptly, that is, on the day on which it is due, it need not be done instantly; a holder has all the business-part of the day in which the bill or note falls due to make his demand in.

Bills and notes payable on demand should be presented for payment within a reasonable time. If said to be "on interest," this strengthens the indication that they were intended to remain for a time unpaid and undemanded. But to hold indorsers, they should still be presented within whatever time circumstances may make a reasonable time; and this is such a time as th interests and safety of all concerned may require; and it may be a few days, or even one or two weeks. A bill or note in which no time of payment is expressed is held to be payable on demand. And evidence to prove it otherwise is inadmissible.

The holder of a check should present it at once; for the drawer has a right to expect that he will; it should, therefore, be presented, or forwarded for presentment, in the course of the day following that in which it was received, or, upon failure of the bank, the holder will lose the remedy he would otherwise have had against the person from whom he receives it. If the drawer of the check had no funds, he is liable always.

Every demand of payment should be made at the proper place, which is either the place of residence or of business of the payer, and within the proper hours of business. If made at a bank after hours of business, if the officers are there, and refuse payment for want of funds, the demand is sufficient.

A note payable at a particular place should be demanded at that place; and a bill drawn payable at a particular place should be demanded there, in order to charge the drawer of a bill, and the indorsers of a bill or note. But in this country an action may be maintained against the maker or acceptor without such demand; but the defendant may discharge himself of damages and costs beyond the amount of the paper, by showing that he was ready at that place with funds. If a note is payable at any of several different places, presentment at any one of them will be sufficient. If a bill which is drawn payable generally, be accepted payable at a particular place, the holder may and should so far regard this as non-acceptance, that he should protest and give notice. But if this limited acceptance is assented to and received, it must be complied with by the holder, and the bill must be presented for payment at that place, or the drawer and indorsers are discharged.

If payable at a banker's, or at the house or counting-room of any person, and such banker or person becomes the owner at maturity, this is demand enough; and if there are no funds deposited with him for the payment, this is refusal enough. If any house be designated, a presentment to any person there, or at the door if the house be shut up, is enough.

If this direction be not in the body of the note, but added at the close, or elsewhere, as a memorandum, it is not part of the contract, and should not be attended to.

If the payer has changed his residence, he should be sought for with due diligence; and, if he has absconded, it is better to make the demand at his last place of residence or business.

Where a bill or note is not presented for payment, or not presented at the time, or to the person, or in the place, or in the way, required by law, all parties but the acceptor or maker are discharged, for the reasons before stated.

5. OF PROTEST AND NOTICE.— If a bill of exchange be not accepted when properly presented for that purpose, or if a bill or note, when properly presented for payment, be not paid, the holder has a further duty to perform to all who are responsible for payment. In case of non-payment of a *foreign* bill, there should be a regular protest by a public notary; but this is not strictly necessary in the case of an inland bill, or a promissory note, whether foreign or inland. But in practice, all bills if not accepted, and all bills and notes if unpaid, are protested. By a *foreign* bill is meant a bill drawn in one State or country, and payable in another. But notice of non-payment should be given to all antecedent parties, equally, and in the same way, in the case of both bills and notes.

The demand and protest must be made according to the laws of the place where the bill is payable. It should be made by a notary-public, who should present the bill himself; but, if there be no notary-public in that place or within reasonable reach, it may be made by any respectable inhabitant in the presence of witnesses.

The protest should be noted on the day of demand and refusal; and may be filled up afterwards, even so late as at the trial.

The loss of a bill is not a sufficient excuse for not protesting it. But a subsequent promise to pay by a drawer or indorser, if made with knowledge of the facts, is held to imply, or be equal to, a previous protest and notice to him.

The notarial seal is of itself evidence of the dishonor of a foreign bill, but not of an inland bill. And no collateral statement in the certificate is evidence of the fact therein stated; thus the statement by a notary, that the drawee refused to accept or pay because he had no funds of the drawer, is no evidence of the absence of such funds.

Notice must be given even to one who has knowledge. No particular form is necessary; it may be in writing, or oral; all that is absolutely essential is, that it should designate the note or bill with sufficient distinctness, and state that it has been dishonored; and also that the party notified is looked to for payment; but it has been held that the notice to the party bound to pay, when given by the immediate holder of the bill, sufficiently implies that he is looked to. Notice of protest for non-payment is sufficient notice to indorsers of demand and refusal. How distinctly the note or bill should be described cannot be precisely defined. It is enough if there be no such looseness, ambiguity, or misdescription as might mislead a man of ordinary intelligence; and if the intention was to describe the true note, and the party notified was not actually misled, this would always be enough.

The notice need not state for whom payment is demanded, nor where the note is lying; and even a misstatement in this respect may not be material if it do not actually mislead.

No copy of the protest need be sent to indorsers; but information of the protest should be given.

If the letter be properly put into the post-office, any mis carriage of the mail does not affect the party giving notice. The address should be sufficiently specific. Only the surname,—as "Mr. Ames,"—especially if sent to a large city, would not, in general, be enough. If a letter, however generally directed, can be shown to have reached the right person at the right time, it is sufficient. The postmarks are strong evidence that the letter was mailed at the very time these marks indicate but this evidence may be rebutted, that is, contradicted.

A notice not only may, but should, be sent by the public post. It may, however, be sent by a private messenger; but is not sufficient if it do not arrive until after the time at which it would have arrived by mail. It may be sent to the town where the party resides, or to another town, or to a more distant post office, if it is clear that he may thereby receive the notice earlier. And if the notice is sent to what the sender deems, after due diligence, the nearest post-office, this is enough. If the parties live in the same town, notice should not be sent by mail.

The notice should be sent either to the place of business, or to the residence, of the party notified. But if one directs a notice to be sent to himself elsewhere than at home, it may be so sent, and bind not only him, but prior parties, although time is lost by so sending it.

The notice of non-payment should be sent within reasonable time; and in respect to negotiable paper, the law-merchant defines this within very narrow limits. If the parties live in the same town, notice must be given or sent so that the party to whom it is sent may receive the notice in the course of the day next after that in which the party sending has knowledge of the fact. If the parties live in different places, the notice must be sent as soon as by the first practicable mail of the next day, or the next mail, if there be none on the next day.

Each party receiving notice has a day, or until the next post after the day in which he receives it, before he is obliged to send the notice forward. Thus, if there be six indorsers, and the note is due on the 10th of May, in New York, and is then demanded and unpaid, the holder may send it by any mail which leaves New York on the 11th of May, to the last indorser, wherever he lives; and that indorser may send it to the indorser immediately before him, by any mail on the day after he receives it; and so may each of the parties receiving notice; and all the parties to whom notice is sent in this way will be held. So, too, a banker, with whom the paper is deposited for collection, is considered a holder, and entitled to a day to give notice to the depositor, who then has a day for his notice to antecedent parties. The different branches of one establishment have been held distinct holders for this purpose, and each to be entitled to a day. It should be sent by the first safe opportunity.

Neither Sunday nor any legal holiday is to be computed in reckoning the time within which notice must be given.

There is no presumption of notice; and the plaintiff must prove that it was given, and was sufficient. Thus, proving that it was given in "two or three days" is insufficient, if *two* would have been right, but *three* not.

Notice should be given only by a party to the instrument, who is liable upon it, and not by a stranger; and it has been held that notice could not be given by a first indorser, who, not having been notified, was not himself liable. A notice by any party liable will operate to the benefit of all antecedent or subsequent parties; that is, will hold them all to the original holder of the note, if the original holder gave notice properly to the party nearest to him. The notice may be given by any authorized agent of a party who could himself give notice.

Notice must be given to every antecedent party who is to be held. And we have seen that this may be given by a holder to the first party liable, and by him to the next, &c. But the holder may always give notice to all antecedent parties; and it is always prudent, and in this country, usual, to do so. For the holder loses all remedy against all those who are discharged by the failure of any one receiving notice to transmit it properly. But if a holder undertakes to notify *all* the antecedent parties, he must notify all as soon as he was obliged to notify the party nearest to him; that is, the day after the dishonor of the note. We mean by this, that every party has a *day;* so that, if there be six indorsers, if the first indorser is notified on the seventh day from the dishonor, it is enough, *if* the holder took his day to notify the sixth indorser, and that indorser his day to notify the fifth, and so on. But the holder has nobody's day but his own; and if he undertakes to notify all the parties, he must notify them all on the first day after the non-payment.

Notice may be given personally to a party, or to his agent authorized to receive notice, or left in writing at his home or place of business. If the party to be notified is dead, notice should be given to his personal representatives. A notice addressed to the "legal representative of," &c., and sent to the town in which the deceased party resided at his death, has been held sufficient. But a notice addressed to the party himself, when known to be dead, or to "the estate of," &c.,

would not be of itself sufficient, but might become so with evidence that the administrator or executor actually received the notice.

If two or more parties are jointly liable on a bill as partners, notice to one is enough; but, if the indorsers are not partners, notice should be given to each.

One transferring by delivery, without indorsement, a note or bill payable to bearer, is not generally entitled to notice of non-payment, because, generally, he is not liable to pay such paper; but if the circumstances of the case are such as to make him liable, then he must have notice, but is entitled not to the exact notice of an indorser, but only to such reasonable notice as is due to a guarantor. If, for instance, the paper was transferred as security, or even in payment of a pre-existing debt, this debt revives if the bill or note be dishonored; and therefore there must be notice given of the dishonor.

In general, a guarantor of a bill or note, or debt, is not entitled to such strict and exact notice as an indorser is entitled to, but only to such notice as shall save him from actual injury; and he cannot make the want of notice his defence, unless he can show that the notice was unreasonably withheld or delayed, and that he has actually sustained injury from such delay or want of notice. If an indorser give also a bond, or his own note, to pay the debt, he is not discharged from his bond or note by want of notice.

In general, all parties to negotiable paper, who are entitled to notice, are discharged by want of notice. The law presumes them to be injured, and does not put them to proof.

The right to notice may be waived by any agreement to that effect prior to the maturity of the paper. It is quite common for an indorser to write, "I waive notice," or, "I waive demand," or some words to this effect. It should, however, be remembered, that these rights are independent, and one does not imply the other. A waiver of notice of non-payment does not imply a waiver of demand; therefore, if an indorser writes on the note, "I waive notice," still he will be discharged if there be not a due *demand* on the maker. And it has been held that a waiver of protest is a waiver of *demand*, but not of *notice.* So if a drawer countermands his order, the bill should still be presented, but notice of dishonor need not be given to the drawer. Or, if a drawer has no funds, and nothing equivalent to funds, in the drawee's hands, and would have no remedy against the drawee or any one else, as the drawer cannot be prejudiced by want of notice, it is not necessary to give him notice. But the indorser must still be notified; and a drawer for the accommodation of the accepter is entitled to notice, because he might have a claim upon the acceptor.

Actual ignorance of a party's residence justifies the delay necessary to find it out, and no more; and after it is discovered, the notifier has the usual time.

Death, or severe illness, of the notifier or his agent, is an excuse for delay; but the death, bankruptcy, or insolvency of the drawee of a bill is no excuse.

As the right to notice may be waived before maturity, so the want of notice may be cured afterwards by an express promise to pay; and an acknowledgment of liability, or a payment in part, is evidence, but not conclusive evidence, of notice; the jury *may* draw this conclusion from part payment, but are not *bound* to, even if the evidence be not rebutted. If the promise be conditional, and the condition be not complied with, the promise has been held to be still evidence of protest. Nor is it sufficient to avoid such promise, that it was made in ignorance of the law; but it is void if made in ignorance of the *fact* of non-notice.

SECTION VI.

THE RIGHTS AND DUTIES OF THE INDORSER.

ONLY a note or bill payable to a payee or order is, strictly speaking, subject to indorsement. Those who write their names on the back of any note or bill are indorsers in one sense, and are sometimes called so; but are not meant in the law-merchant by the word "indorsers."

The payee of a negotiable bill or note—whether he be also maker or not—may indorse it, and afterwards any person or any number of persons, may indorse it. The maker promises to pay to the payee or his order; and the indorsement is an order on the maker to pay the indorsee, and the maker's promise is then to pay the note to him. But if the original promise was to the payee or order, this "or order," which is the negotiable element, passes over to the indorsee, though not written in the indorsement, and the indorsee may indorse, and so may his indorsee, indefinitely.

Each indorser, by his indorsement, does two things: first, he orders the antecedent parties to pay his indorsee; and next, he engages with his indorsee, that, if they do not pay, he will.

If the words "to order," or "to bearer," are omitted accidentally, and by mistake, they may be afterwards inserted without injury to the bill or note; and whether a bill or note is negotiable or not, is a question of law.

By the law-merchant, bills and notes which are payable to order can be effectually and fully transferred only by indorsement. This indorsement may be *in blank*, or *in full*. The writing of the name of a payee,—either the original payee or an indorsee,—with nothing more, is an indorsement in blank; and a blank indorsement makes the bill or note transferable by delivery, in like manner as if it had been originally payable to bearer. After a note has been indorsed by a payee, any person may write his name on the note under that of the payee, and be held as indorser,—because any subsequent holder may write over the name of the first indorser a direction to pay the note to the next signer, and this makes the next signer an indorsee, and so gives him a right to indorse; and he or any holder may write over his name an order to pay the holder, or anybody else. If the indorsement consist not only of the name, but of an order above the name to pay the note to some specified person, then it is an indorsement in full, and the note can be paid to no one else unless that person indorses it; nor can the property in it be fully transferred, except by his indorsement; and his indorsee may again indorse it in blank or in full. If the indorsement is, Pay to A B *only*, or in equivalent words, A B is indorsee, but cannot indorse it over.

Any holder for value of a bill or note indorsed in blank, whether he be the first indorsee or one to whom it has come through many hands, may write over any name indorsed an order to pay the contents to himself; and this makes it a special indorsement, or an indorsement in full. This is often done for security; that is, to guard against the loss of the note by accident or theft. For the rule of law is, that negotiable paper transferable by delivery (whether payable to bearer or indorsed in blank) is, like money, the property of whoever receives it in good faith. The same rule has been extended in England to exchequer bills; to public bonds payable to bearer; and to East India bonds; and we think it would extend here to our railroad and other corporation bonds, and, perhaps, to all such instruments as are payable to bearer, whether sealed or not, and whatever they may be called. If one has such an instrument, and it is stolen, and the thief passes it for consideration to a *bona fide* holder, this holder acquires a legal right to it, because the property and possession go together. But if the bill or note be *specially* indorsed, no person can acquire any property in it, except by the indorsement of the special indorsee.

It may be well to remark here, that the finder of negotiable paper, as of all other property, ought to make reasonable endeavors to discover the owner, and is entitled to use the thing found as his own only when he has made such endeavors unsuccessfully. If he conceals the fact of finding, and appropriates the thing to his own use, he is liable to the charge of larceny or theft.

The written transfer of negotiable paper is called an indorsement, because it is almost always written on the back of the note; but it has its full legal effect if written on the face.

Joint payees of a bill or note, who are not partners, must all join in an indorsement.

An indorser may always prevent his own responsibility by writing "without recourse," or other equivalent words, over his indorsement; and any bargain between the indorser and indorsee, written or oral, that the indorser shall not be sued, is available by him against that indorsee; but he cannot make this defence against subsequent indorsees who had no notice of the bargain before they took the note.

Every indorsement and acceptance admits conclusively the genuineness of the signature of every party who has put his name upon the bill previously in fact, and who is also previous in order. By this is meant, that if an indorser—say a third indorser—is sued, he cannot defend himself by saying that the names of the maker and first and second indorsers, or either of them, were forged, because by indorsing it himself he gives his indorsee a right to believe that the previous signatures were genuine. And an acceptor cannot say that his drawer's name is forged; but he may say that an indorsement which was on the bill when he accepted it was forged, because an indorsement of a bill comes properly and in *order of law* after acceptance.

If a holder strikes out an indorsement by mistake, he may restore it; if on purpose, the indorser is permanently discharged.

A holder may bring his action against any prior indorser, either by making title through all the subsequent indorsements, or by filling any blank indorsement specially to himself, and suing accordingly; but then he invalidates all the indorsements which are subsequent to that which he has made special to himself.

One may make a note or bill payable to his own order, and indorse it in blank; and this is now very common in our commercial cities, because the holder of such a bill or note can transfer it by delivery, and it needs not his indorsement to make it negotiable further. A note to the maker's own order if not indorsed by him, is, strictly speaking, of no force against him. But there is some disposition in the courts to say that a holder of such note may sue the maker as if the note were to bearer.

A transfer by delivery, without indorsement, of a bill or note payable to bearer, or indorsed in blank, does not generally make the transferrer responsible to the transferree for the payment of the instrument. Nor has the transferree a right to fall back, in case of non-payment, upon the transferrer for the original consideration of the transfer, if the bill were transferred in good faith, in exchange for money or goods; for such transfer would be held to be a sale of the bill or note, and the purchaser takes it with all risk.

An indorsement may be made on the paper before the bill or note is drawn; and such indorsement, says Lord Mansfield, "is a letter of credit for an indefinite sum, and it will not lie in the indorser's mouth to say that the indorsements were not regular." The same rule applies to an acceptance on blank paper. So an indorsement may be made after or before acceptance, though strictly proper only after.

A bill or note once paid at or after maturity, ceases to be negotiable, in reference to all who had been discharged by the payment. If issued again, it is like a new note without their names. If a bill or note is paid before it is due, it is valid in the hands of a subsequent *boná fide* indorsee, and must be paid to him.

A portion of a negotiable bill or note cannot be transferred, so as to give the transferree a right of action for that portion in his own name. But if the bill or note be partly paid, it may be indorsed over for the balance.

After the death of a holder of a bill or note, his executor or administrator may transfer it by his indorsement. The husband who acquires a right to a bill or a note which was given to the wife either before or after marriage, may indorse it.

If the rule that the same party cannot be plaintiff and defendant, prevents the action, as where A, B, & Co. hold the note of A, C, & Co., so that if a suit were brought A would be one of the plaintiffs and one of the defendants also, which cannot be, A, B, & Co. may indorse the note to D, who may then sue A, C, & Co.

SECTION VII.

THE RIGHTS AND DUTIES OF THE ACCEPTOR.

ACCEPTANCE applies to bills, and not to notes. It is an engagement of the person on whom the bill is drawn to pay it according to its tenor. The usual way of entering into this agreement, or of accepting, is by the drawee's writing his name across the face of the bill, and writing over it the word "accepted." But any other word of equivalent meaning may be used, and it may be written elsewhere, and it need not be signed, or the drawee's name alone on the bill may be enough; a written promise to accept a future bill, if it distinctly define and describe that very bill, has been held in this country as the equivalent of an acceptance, if the bill was taken on the credit of such promise.

A banker is liable to his depositor without acceptance of his checks, if he refuses to pay checks drawn against funds in his hands.

If a bill is accepted by a part only of those jointly responsible, or joint drawees, it may be treated by the holder as dishonored; but if not so treated, the parties accepting will be bound.

An acceptance may be made after maturity, and will be treated as an acceptance to pay on demand.

The acceptance may be cancelled by the holder; and if this cancelling be voluntary and intended, it is complete and effectual; but if made by mistake, by him or other parties, and this mistake can be shown, the acceptor is not discharged. And if the cancelling be by a third party, it is for the jury to say whether the holder authorized or assented to it.

If a qualified acceptance be offered, the holder may receive or refuse it. If he refuses it, he may treat the bill as dishonored; if he receives it, he should notify antecedent parties, and obtain their consent; without which they are not liable. But if he protests the bill as dishonored, for this reason, he cannot hold the acceptor upon his qualified acceptance.

A bill drawn on one incompetent to contract, as from infancy, marriage, or lunacy, may be treated by the holder as dishonored.

A bill can be accepted only by the drawee,—in person or by his authorized agent,—or by *some one who accepts for honor.*

SECTION VIII.

ACCEPTANCE OR PAYMENT FOR HONOR.

If a bill be protested for non-acceptance or for non-payment, any person may accept it, or pay it *for the honor* either of the drawer or of any indorser. This he usually does by going with the bill before the notary public who protested the bill, and there declaring that he accepts or pays the bill *for honor;* and he should designate for whose honor he accepts or pays it, at the time, before the notary public, and it should be noted by him.

A general acceptance *supra protest* (which is the phrase used both by merchants and in law, meaning *upon* or *after protest*) for honor, is taken to be for honor of the drawer. The drawee himself, refusing to accept it generally, may thus accept for the honor of the drawer or an indorser. And after a bill is accepted for honor of one party, it may be accepted by another person for honor of another party. And an acceptance for honor may be made at the intervention and request of the drawee.

No holder is obliged to receive an acceptance for honor; he may refuse it wholly. If he receive it, he should, at the maturity of the bill, present it for payment to the drawee, who may have been supplied with funds in the meantime. If not paid, the bill should be protested for non-payment, and then presented for payment to the acceptor for honor.

The undertaking of the acceptor for honor is collateral only; being an engagement to pay if the drawee does not. It can only be made for some party who will certainly be liable if the bill be not paid; because, by an acceptance or by a payment, properly made, for honor, *supra protest*, such acceptor or payer acquires an actual claim against the party for whom he accepts, or pays, and against all parties to the bill antecedent to him, for all his lawful costs, payments, and damages, by reason of such acceptance or payment. This is an entire exception to the rule that no person can make himself the creditor of another without the request or consent of that other; but it is an exception established by the law-merchant.

The reason why bills of exchange are sometimes accepted or paid *for honor* is to save the party for whose honor this is done, from the very heavy damages of a protested bill.

In many of our States it is a common practice to give a promissory note, and include in it *a confession of judgment*, for the amount. A suit may then be brought on the note as soon as it is due and unpaid, and a judgment taken out at once without the delay of a trial; and execution may issue on the judgment. Sometimes by the same note the promisor waives or renounces the benefit or protection of all exemption laws; and then the execution may be satisfied from any of his property that the sheriff can find.

(68.)

Form of a Judgment Note with Waiver.

$ 19

(*Time.*) after date, for value received, promise to pay or bearer, dollars, with interest, and without defalcation or stay of execution. And do hereby confess judgment for the above sum, with interest and costs of suit, a release of all errors, and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

(*Signature.*)

Sometimes, in addition to the above, the same note has below it a power of attorney, authorizing the attorney whose name is put into the blank left for that purpose to appear in court for the promisor, and confess judgment. Sometimes the power is given to an attorney whom the parties agree upon, and then no other attorney can confess the judgment. It is, however, far more usual, and better, to insert the name of an attorney, and add, as in the following form, "or any attorney of any court of record."

Sometimes the note is followed on the same paper by a power to confess judgment, and a waiver of all right of exemption; both the power and the waiver extending beyond the above written note, and covering other notes and bonds and other evidence of debt.

(69.)

Judgment Note with fuller Waiver, and Power of Attorney.

$ 19 .

for value received, promise to pay to the order of the sum of dollars, with interest, in (*time*)

(*Signature.*)

Know all Men by these Presents, That whereas, the subscriber now justly indebted to upon a certain promissory note, bearing even date herewith, for the sum of dollars, and cents, made payable to the order of the said and due , and may from time to time hereafter become further or otherwise justly indebted to the said upon bonds, promissory notes, due-bills, and other written evidences of debt, made, or to be made, indorsed or accepted by and held or owned by the said assignee or assignees hereof.

Now, Therefore, in consideration of the premises, and of the sum of one dollar to paid by the said the receipt whereof is hereby acknowledged do hereby make, constitute, and appoint or any attorney of any court of record, to be true and lawful attorney, irrevocable, for and in name, place, and stead, to appear in and before any court of record, either in term-time or in vacation, in any of the States or Territories of the United States, at any time after the of said note, or of any such bond, promissory note, due-bill, or other written evidence of debt, so already made or to be made, indorsed or accepted by as aforesaid, respectively, to waive service of process, and confess a judgment in favor of the said executors, administrators, assignee or assignees, or the legal holder or holders of said note or of any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt, as aforesaid, for so much money as shall by the same appear to be due or owing thereon, with interest thereon according to the tenor and effect thereof respectively, together with costs: also, for dollars attorney's fees, to be added to the amount due or owing on entering up judgment; also, to file a cognovit for the amount that may be so due or owing, including attorney's fees as aforesaid, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered up by virtue hereof, nor any bill in equity filed to restrain or in any manner interfere with the operation of said judgment, or any execution issued or to be issued thereon, and to release all errors that may intervene in the entering-up of any such judgment or issuing any execution thereon, and to consent, stipulate, and agree, that any execution issued or to be issued upon such judgment, may be immediately levied upon, and satisfied out of any personal property which may have or own, and to waive and relinquish all right to have personal property last taken and levied upon to satisfy such execution, and also to consent that execution may issue upon any such judgment immediately. Hereby ratifying and confirming all that said attorney may do by virtue hereof.

And, in consideration of the premises, do hereby stipulate, covenant, and agree with the said executors, administrators, and with the assignee, assignees, or the legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt as aforesaid, that any execution so issued or to be issued as aforesaid, may first be levied upon and satisfied out of any personal property which may have or own, hereby expressly waiving all right to have personal property last taken and levied upon to satisfy such execution.

Witness hand and seal this day of
A. D. 19 .

(*Signature.*) (*Seal.*)

In Presence of

(70.

Notarial Protest.

UNITED STATES OF AMERICA.

STATE OF
CITY (OR TOWN) OF AND COUNTY OF } SS.

BE IT KNOWN that on this day of in the year of our Lord one thousand nine hundred , at the request of

I, Notary Public, duly commissioned and sworn, residing in the City (or Town) of aforesaid, did present the original (*note or bill of exchange*) hereunto annexed to

and demanded (*payment or acceptance*) thereof, which was refused, stating

WHEREUPON, I, the said Notary, at the request aforesaid, did PROTEST, and do hereby publicly and solemnly PROTEST against the Drawers and Endorsers of the said (*note or bill*) and all others concerned, for all exchange, re-exchange, all costs, damages, and interest, incurred or to be incurred for want of (*payment or acceptance*) of the same.

And I, the said Notary, do hereby certify, that on the same day I deposited in the Post Office at , Notices for the following persons:

THUS DONE AND PROTESTED, in the City (or Town) of aforesaid and my Notarial Seal affixed, the day and year above written.

Notary Public.

Notice of Protest.

19 .

Sir:

Please take notice, that a (*note made by, or bill of exchange drawn by on*) for dollars, dated 1900, payable and endorsed by you, is duly protested for non-payment (*or acceptance*), payment (*or acceptance*) having been demanded and refused, and the holders look to you for the payment thereof.

Respectfully,

Notary Public.

To ——— ———

ABSTRACT OF THE DAYS OF GRACE AND HOLIDAYS IN ALL THE STATES AND TERRITORIES.

ALABAMA. — All negotiable instruments are governed by the commercial law. There is no special legislation on the subject. Sundays, Christmas Day, January 1st, January 19th, February 22d, April 26th, June 3d, July 4th, the first Monday of September, Thanksgiving Day, Good Friday, and Mardi Gras are holidays. If Christmas, January 1st, February 22d, April 26th, or July 4th falls on Sunday, the Monday following is a holiday. Paper falling due on a holiday is payable on the next succeeding business day.

ARIZONA. — Days of grace are abolished. January 1st, February 22d, May 30th, July 4th, December 25th, Sundays, thanksgiving, arbor, and election days are holidays. When any other holiday falls on Sunday, the following day is treated as a legal holiday. Notes, checks, etc., payable on a holiday are due and collectible on the day following.

ARKANSAS. — Negotiable instruments are governed by the rules of commercial law. Sundays, Jaunary 1st, February 22d, July 4th, December 25th, and Thanksgiving Day are legal holidays, and all paper falling due on either of said days and entitled to grace, is payable on the preceding day.

CALIFORNIA. — Days of grace are not allowed; but all contracts to be performed on a holiday may be performed on the next day. Sundays, January 1st, February 22d, May 30th, July 4th, September 9th, the first Monday of September, Christmas, general election days, and all days appointed by the Governor or President as days of public fast, thanksgiving, or holiday, are legal holidays. When any other holiday falls on Sunday, the Monday following is treated as a holiday.

COLORADO. — Days of grace are not allowed. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, the first Monday of September, election day in November, December 25th, thanksgiving and fast days are holidays, and bills and notes due on any of said days are payable on the next succeeding business day. When any holiday falls on Sunday, the Monday following is treated as a holiday.

CONNECTICUT. — Days of grace are abolished. Paper falling due on Sunday, January 1st, February 12th, February 22d, May 30th, July 4th, the first Monday of September, December 25th, thanksgiving or fast days, is payable on the secular day not a holiday next succeeding. A holiday falling on Sunday is observed on Monday. Saturday afternoon is a holiday for banking purposes, and paper maturing on Saturday is payable on Monday, but instruments payable on demand may be presented for payment before twelve o'clock.

DELAWARE. — Days of grace are abolished. Sundays, January 1st, February 12th and 22d, May 30th, December 25th, July 4th, the first Monday of September, general election day and Good Friday, and any day appointed for thanksgiving, Saturday afternoon in the city of Wilmington, are public holidays, and negotiable instruments due on such day or on the following day, when any holiday falls on Sunday, are payable on the next preceding secular day. When, however, paper matures on a half holiday Saturday, it is payable on the next succeeding secular day.

DISTRICT OF COLUMBIA. — Days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, December 25th, the first Monday of September, inauguration day, thanksgiving and fast days are public holidays, and notes falling due thereon are deemed to have matured on the business day following. When any other holiday falls on Sunday, the following day is a holiday. Saturday afternoon is a holiday for banking purposes.

FLORIDA. — Days of grace are abolished. Sundays, January 1st, January 19th, February 22d, April 26th, June 3d, July 4th, 1st Monday of September, December 25th, general election days, Mardi Gras in all cities or towns having a Carnival Association, and days of public thanksgiving, fasting, and prayer are public holidays, and notes falling due on such days must be presented on next succeeding business day. When any other holiday, excepting January 17th and June 3d, falls on Sunday, the following Monday is a holiday. Notes, etc., falling due Saturday are payable on Monday, but if on demand may be presented Saturday before twelve.

GEORGIA. —Days of grace are abolished on all commercial paper. Sundays, January 1st and 19th, February 22d, April 26th, June 3d, July 4th, December 25th, the first Monday of September, and days of public thanksgiving and fast are holidays. Notes, etc., falling due on a holiday are payable on the business day next preceding; but when holiday falls on Sunday, Monday is observed, and paper due on Sunday is payable on Saturday, and that due on Monday is payable on Tuesday. When holiday falls on Saturday paper due on Sunday is payable on Monday, and when it falls on Monday paper due that day is payable on Tuesday.

IDAHO. — Days of grace are abolished. Sundays, January 1st, February 22d, the last Monday in April, July 4th, December 25th, election, fast, and thanksgiving days are holidays. Paper due on a holiday is payable on the day following.

ILLINOIS. — Days of grace are not allowed. Holidays are Sundays, January 1st, February 12th and 22d, May 30th, July 4th, December 25th, the first Monday of September, general election days, and any day appointed by the Governor or President as a day of fast or thanksgiving; and paper falling due on any of said days is payable on the following business day. If holiday falls on Sunday, Monday is observed.

INDIANA. — Days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, the first Monday in September, Thanksgiving Day, Christmas Day, and general state or national election days are legal holidays, and in cities of 35,000 or more Saturday after 12 o'clock noon is a legal half holiday. When a holiday falls on Sunday, Monday is observed. Notes, etc., falling due on Sunday or a legal holiday are payable on the next succeeding business day.

IOWA. — Days of grace are abolished. Holidays are Sundays, January 1st, February 22d, May 30th, July 4th, the first Monday of September, Christmas Day, general election day, and any day appointed by the Governor or President as a day of fast or thanksgiving, and notes and bills due on the same are payable on the following business day.

KANSAS. — Days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, Christmas, New Year's day, general election days, thanksgiving and fast days, and the first Monday of September, are holidays; notes falling due on a holiday are payable on the next succeeding business day.

KENTUCKY. — No grace is allowed on any negotiable instruments. Sundays, January 1st, the 22d of February, May 30th, 4th of July, Christmas Day, general election days, all days appointed by the President or Governor as days of thanksgiving or fasting are holidays. When any of said days occur on Sunday, the following day is to be observed, but bills and notes falling due on the same are payable on the Saturday previous.

LOUISIANA. — Days of grace are abolished. Holidays are Sundays, January 1st, January 8th, February 22d, Good Friday, June 3d, July 4th, November 1st, December 25th, Thanksgiving Day, all general election days, and in the Parish of Orleans, Mardi Gras,, and the 1st Monday of September, and in cities of over 15,000 Saturdays from 12 o'clock noon, and in cities of over 50,000 whenever a legal holiday falls on Sunday the succeeding day. Notes, etc., falling due on a holiday are payable on the next succeeding business day, except that those falling due on Saturday payable on demand may be presented before 12 o'clock noon on Saturday.

MAINE. — Days of grace are abolished except on sight drafts. Sundays, public fasts and thanksgiving, January 1st, February 22d, May 30th, July 4th, the first Monday of September, and December 25th, are holidays, and negotiable instruments falling due on the same are payable on the succeeding business day. A holiday falling on Sunday is observed on Monday. Saturday after twelve is a holiday for banking purposes.

MARYLAND. — Days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, December 25th, the first Monday in September, Good Friday, days of public thanksgiving, and general election days, are public holidays, and negotiable paper falling due on any of said days is payable on the business day next succeeding. Paper falling due on Saturday is also payable on the next succeeding business day, but if payable on demand may be presented on Saturday before 12 o'clock.

MASSACHUSETTS. — No grace is allowed on any negotiable instrument except sight drafts and bills of exchange. Instruments falling due on Sunday or a holiday are payable on the next succeeding business day. Those falling due on Saturday are to be presented on the next succeeding business day except that if payable on demand they may at the option of the holder be presented for payment before 12 o'clock. Holidays are February 22d, April 19th, May 30th, July 4th, Thanksgiving, Christmas, the first Monday in September, and the following day when any of these falls on Sunday.

MICHIGAN. — Days of grace are allowed on all bills of exchange, notes, and drafts, payable at sight or at a future day certain; but not on any bill, note, or draft payable on demand. Bills and notes maturing on Sunday or a legal holiday are payable on the day preceding. Holidays are New Year's Day, February 22d, May 30th, July 4th, the first Monday of September, Christmas, general election days, and any day appointed by the Governor or President as a day of fasting or thanksgiving. When any holiday falls on Sunday the day following is a holiday. Saturday afternoon is a holiday for banking purposes, and notes falling due Saturday are payable on business day following.

MINNESOTA. — Days of grace are abolished, except in the case of bills of exchange payable at sight, and negotiable promissory notes, drafts, etc., payable at a future day certain. Bills, notes, and drafts payable on Sunday, Thanksgiving, general election day, the first Monday of September, Good Friday, Christmas, New Year's Day, February 12th, February 22d, May 30th, and July 4th, or on the following day when either of the last six falls on Sunday, are payable on the business day next succeeding.

MISSISSIPPI. — Grace is allowed on bills of exchange, notes, and drafts given for a sum certain. Notes, etc., falling due on Sunday, New Year's Day, April 26th, the Fourth of July, Thanksgiving, or Christmas Day, are payable on the secular day next preceding.

MISSOURI. — Grace is abolished. Sundays, January 1st, February 22d, May 30th, July 4th, first Monday of September, Christmas Day, state and national thanksgiving days, and the day of the general state election, are public holidays, and negotiable instruments due thereon are payable on the succeeding day. Holiday falling on Sundav is observed on Monday. In cities of over 100,000 inhabitants, Saturday is a half-holiday, and notes falling due on that day are payable Monday.

MONTANA. — Days of grace are abolished. Bills and notes falling due on Sunday, January 1st, February 22d, May 30th, July 4th, December 25th, the first Monday in September, general election, fast or thanksgiving days, are payable on the day following. A holiday falling on Sunday is observed on Monday.

NEBRASKA. — Grace is not allowed. Holidays falling on Sunday are observed on Monday, and negotiable instruments falling due on Sunday or a holiday are payable on the next business day. Holidays are January 1st, February 22d, April 22d, May 30th, July 4th, December 25th, the first Monday in September, Thanksgiving and Fast Days.

NEVADA. — Grace is allowed except on sight drafts. Paper falling due on a holiday is payable on the day preceding. Holidays are Sundays, January 1st, February 22d, July 4th, Thanksgiving and Christmas days, and general election day.

NEW HAMPSHIRE. — Grace is allowed only on sight drafts. Negotiable paper due on Sunday, Thanksgiving, Fast, the general state election, February 22d, May 30th, July 4th, the first Monday of September, Christmas, or on the following day when either of these days falls on Sunday, is due and payable on the business day next succeeding.

NEW JERSEY. — Days of grace are abolished. Bills of exchange or promissory notes falling due on Sunday, Christmas, New Year's day, February 12th, February 22d, May 30th, July 4th, the first Monday of September, general election days and any day of public thanksgiving or fasting are payable on the next succeeding secular day, unless such holiday falls on Sunday, when they are payable on the Tuesday following. Holidays fall-on Sunday are observed on Monday. Saturday afternoon is a holiday for banking purposes. Notes falling due on Saturday may be presented for payment before twelve o'clock, or on the next business day.

NEW MEXICO. — Grace is allowed on notes and bills of exchange. Notes, etc., falling due on Sunday or a holiday, are payable on the next succeeding business day. January 1st, July 4th, December 25th, Thanksgiving, general election days, and fast days are legal holidays.

NEW YORK. — Days of grace are abolished. Sundays, January 1st, February 12th, February 22d, May 30th, July 4th, the first Monday in September, December 25th, Saturday afternoons, any general election day, and any day appointed by the Governor or President as a day of thanksgiving or fasting are holidays. Bills and notes falling due on a holiday or Saturday are payable on the next secular or business day; but those falling due on Saturday may be presented on that day before 12 o'clock. Other holidays falling on Sunday are observed on Monday.

NORTH CAROLINA.— Grace is allowed except on notes and drafts payable on demand. January 1st and 19th, February 22d, May 10th, May 20th, July 4th, the first Monday in September, December 25th, Thanksgiving day, and Saturday afternoons are public holidays. Bills and notes falling due on a holiday on Saturday are payable on the next business day; but those falling due on Saturday may be presented on that day before 12 o'clock. Other holidays falling on Sunday are observed on Monday.

NORTH DAKOTA. — Days of grace are abolished. Notes and bills due on Sundays and holidays are payable on next secular day. January 1st, February 12th, February 22d, July 4th, December 25th, May 30th, general election and thanksgiving days, and Sundays are holidays. Other holidays falling on Sunday are observed on Monday.

OHIO.—Days of grace are abolished. January 1st, February 22d, May 30th, July 4th, the first Monday in September, December 25th, general election days and any day appointed by the Governor of the State or the President of the United States as a day of fasting or thanksgiving, are holidays, and notes, etc., due on such days, or on Sundays, are payable on the secular day next succeeding; if any holiday fall on Sunday, the following Monday is a holiday. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, but if payable on demand, may, at the option of the holder, be presented on Saturday before noon.

OKLAHOMA TERRITORY. — Grace is allowed on all negotiable instruments except on checks, unless expressly excepted, but Sundays and holidays are excluded. Holidays are January 1st, February 22d, May 30th, July 4th, December 25th, general election, fast and thanksgiving days. A holiday falling on Sunday is observed on Monday.

OREGON. — Days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, December 25th, the first Monday of September, days of general election, fast and thanksgiving, are holidays. Notes, etc., payable on a holiday are due on the next business day.

PENNSYLVANIA.—Days of grace are abolished. Sundays, January 1st, February 12th and 22d, third Tuesday in February (election), Good Friday, May 30th, July 4th, first Monday in September, December 25th, first Tuesday after the first Monday in November (election day), fast and thanksgiving days, are public holidays, and negotiable paper due on any of said days is payable on the next succeeding secular day. Saturday afternoons are half-holidays, and notes payable on Saturday are for purposes of protest considered as if payable on Monday, but demand notes may be presented Saturday before noon. When a holiday falls on Sunday, it is observed on the Monday following.

RHODE ISLAND.—Grace is allowed only on sight drafts. Sundays, January 1st, July 4th, Christmas day, February 22d, and May 30th, or when either of said days fall on Sunday the day following it, the second Friday in May, the first Monday of September, Sundays, the Tuesday after the first Monday in November, days of Thanksgiving or fast are holidays, and payment of all notes, checks, and bills, due and payable on such holidays, is to be made on the secular day next succeeding. Saturday after twelve o'clock is a holiday for bank purposes.

SOUTH CAROLINA.—Days of grace are allowed on all bills and notes drawn at sight. Days of national thanksgiving, general election, January 1st and 19th, February 22d, May 10th, June 3d, July 4th, December 25th, the first Monday of September, and in Charleston County Saturday after 12 o'clock, are holidays. If the third day of grace falls on Sunday or a holiday, payment is to be made on the day after.

SOUTH DAKOTA.—Grace is allowed on all bills of exchange and promissory notes, but Sundays and holidays are excluded in the computation. January 1st, February 22d, July 4th, December 25th, May 30th, and days of general election and thanksgiving days are holidays If any of the first four falls on Sunday, the Monday following is a holiday.

TENNESSEE.—Days of grace are abolished. Good Friday, January 1st, February 22d, second Friday in May, June 3d, July 4th, first Monday in September, December 25th, Thanksgiving day, and general election days are holidays. Holidays falling on Sunday are observed on Monday. Notes, etc., falling due on Sunday or a holiday are payable on the next succeeding business day. Those falling due on Saturday are payable the next succeeding business day, except that those payable on demand may at the option of the holder be presented before 12 o'clock on Saturday, when that entire day is not a holiday.

TEXAS.—Grace is allowed on all negotiable notes and bills. January 1st, February 22d, March 2d, April 21st, July 4th, December 25th, the first Monday in September, general election days, and days of public fasting or thanksgiving are holidays. If a holiday occurs on Sunday, the next day is observed as a holiday, but presentment of commercial paper for acceptance or payment in such case may be made on the Saturday previous.

UTAH.—Grace is not allowed. January 1st, February 22d, April 15th, May 30th, July 4th, July 24th, December 25th, the first Monday in September, fast and thanksgiving days, are holidays. Holidays falling on Sunday are observed on Monday. Notes, etc., falling due on Sunday or a holiday are payable on the next succeeding business day. Those falling due on Saturday are payable on Monday, except that those payable on demand may at the option of the holder be presented before 12 o'clock on Saturday.

VERMONT.—Days of grace are abolished. Negotiable paper falling due on Sunday or a legal holiday is considered due on the following business day. Sundays, January 1st, February 22d, July 4th, May 30th, August 16th, December 25th, the first Monday in September, fast and thanksgiving days are legal holidays. When any such holiday falls on Sunday the Monday following is treated as a holiday.

VIRGINIA.—Days of grace are abolished. January 1st and 19th, February 22d, May 30th, June 3d in public schools, July 4th, December 25th, the first Monday in September, and days of public thanksgiving or fast are holidays, and notes, etc., falling due thereon or on Saturdays are payable on the secular day next succeeding. When any holiday falls on Sunday the Monday following is observed as a holiday.

WASHINGTON.— Days of grace are abolished. Sundays, January 1st, February 12th, February 22d, May 30th, July 4th, December 25th, the first Monday in September, days of general election and thanksgiving are holidays, and notes falling due thereon or on Saturday are payable on the next succeeding secular day. Notes falling due on Saturday if payable on demand may be presented on Saturday before 12 o'clock.

WEST VIRGINIA.— Days of grace are abolished. Notes, etc., falling due on Sunday or a holiday are payable on the next succeeding business day; those falling due Saturday, if not paid before noon, are payable Monday. January 1st, February 22d, July 4th, May 30th, December 25th, the first Monday in September, election and thanksgiving days are holidays. A holiday falling on Sunday is observed on Monday.

WISCONSIN.— Days of grace are abolished. Negotiable paper falling due on Sunday, January 1st, February 22d, May 30th, July 4th, December 25th, Thanksgiving day, Labor Day, general election days, is payable on the secular day next succeeding. Holidays falling on Sunday are observed on Monday.

WYOMING.— Grace is allowed, except on notes, etc., payable on demand. January 1st, February 12th and 22d, May 30th, July 4th, December 25th, Arbor Day, General Election Day, and the annual Thanksgiving Day are holidays. If such holiday falls on Sunday, the Monday following is a legal holiday.

CHAPTER XVII.

AGENCY.

SECTION 1.

AGENCY IN GENERAL.

THE relation of principal and agent implies that the principal acts by and through the agent, so that the acts in fact of the agent are the acts in law of the principal; and only when one is authorized by another to act for him in this way, and to this extent, is he an agent. One who is disqualified from contracting on his own account may act as the agent of another, thus infants, married women, and aliens may act as agents for others.

A principal is responsible for the acts of his agent, not only when he has actually given full authority to the agent thus to represent and act for him, but when he has, by his words, or his acts, or both, caused or permitted the person with whom the the agent deals to believe him to be clothed with this authority. And a man may be thus held as a principal, either because he has in some way authorized *all* persons to believe that he has constituted some other man his agent, or because he has authorized only the party dealing with the supposed agent to so believe. For all responsibility rests upon two grounds, which are commonly united, but either of which alone is sufficient; one, the giving of actual authority; the other, such appearing to give authority as justifies those who deal with the supposed agent in believing that this authority was given him.

A general agent is one authorized to represent his principal in all his business, or in all his business of a particular kind A particular agent is one authorized to do only a specific thing or a few specified things. It is not always easy to discriminate between these; but it is often important, by reason of the rule that the authority of the *general* agent is measured by the usual scope and character of the business he is empowered to transact. By appointing him to do that business, the principal is considered as saying to the world that his agent has all the authority necessary to the doing of it in the usual way. And if the agent transcends his actual authority, but does not go beyond the natural and usual scope of the business, the principal is bound, unless the party with whom the general agent dealt knew that the agent exceeded his authority For if an agent does only what is natural and usual in transacting business for his principal, and yet goes beyond the limits prescribed by him, it is obvious that the principal must have put particular and unusual limitations to his authority; and these cannot affect the rights of a third party who deals with the agent in ignorance of these limitations. But, on the other hand, the rule is, that, if an agent who is specially authorized to do a specific thing exceeds his authority, the principal is not bound, because the party dealing with such agent must inquire for himself, and at his own peril, into the extent and limits of the authority given to the agent. Here, however, as before, if the party dealing with the agent, and inquiring, as he should, into his authority, has sufficient evidence of this authority furnished to him by the principal, and, in his dealings with the agent, acts within the limits of the authority thus proved, he cannot be affected by any reservations and limitations made secretly by the principal, and wholly unknown to the person dealing with the agent.

SECTION II.

HOW AUTHORITY MAY BE GIVEN TO AN AGENT.

It may be given under seal, or in writing without seal, or orally. If given by a written instrument, this instrument is called a Power of Attorney, of which we shall give various forms at the close of this chapter. An oral appointment authorizes the agent to make a written contract, but not to execute instruments under seal. But an instrument under seal, signed and sealed in the principal's presence, and by his request and authority, will be regarded as the principal's deed, made by himself. One employed by another to act for him in the usual trade or business of the agent, as auctioneer, broker, or the like, acquires thereby authority to do all that is necessary or usual in that business. And if a person puts his goods into the custody of another whose ordinary and usual business it is to sell such goods, he authorizes the whole world to believe that this person has them for sale, and any person buying them honestly, in this belief, would hold them.

Therefore, if fraudulent by-bidding be procured or permitted by the auctioneer, even without the knowledge of the owner of the goods, the owner is answerable for this fraud of his agent, and the buyer has a right to refuse to take the goods. So neither party is bound until the agreement of sale is completed. Therefore the auctioneer may withdraw any article, and a bidder may withdraw any bid, until the article is "knocked down," but not afterwards; for then the sale is completed, and the property in (or ownership of) the article passes to the buyer.

If one is repeatedly employed to do certain things,—as a wife or a son to sign bills or receipts; or domestic servant to make purchases; or a merchant or broker to sign policies, and the like,—in all these cases, one dealing with the person thus usually employed, is justified in believing him authorized to do those things with the assent and approbation of his employer, and in the same way in which he has done them, but not in any other way. Thus, if a servant is usually employed to buy, but always for cash, this implies no authority to buy on credit.

An agency may be confirmed and established, and in fact created, by a subsequent adoption and ratification; and a ratification relates back to the original transaction; and a corporation is bound by the ratification of an agent's acts, in the same manner as an individual would be. But no ratification is effectual to bind the principal, unless made by the principal with a knowledge of all the material facts. And there can be ratification only where the act is done by one purporting to be an agent, or by an assumed authority. Generally, one who receives and holds a beneficial result of the act of another as his agent, is not permitted to deny such agency; and in some cases this is extended even to acts of such agent under seal.

Thus, if an agent sell under seal property of a supposed principal, an individual or a corporation, and receive payment, and hand this over to the principal, if the principal could show that the agent had no authority, he might avoid the sale, and recover the property; but he could not do this and also hold the money paid for it. And if one, knowing that another has acted as his agent, does not disavow the authority as soon as he conveniently can, but lies by and permits a person to go on and deal with the supposed agent, or to lose an opportunity of indemnifying himself, this is an adoption and confirmation of the acts of the agent. Nor can a supposed principal adopt a part for his own benefit, and repudiate the rest of the supposed agency; he must adopt the whole or none.

If an agent makes a sale, and his principal ratifies the sale, he thereby ratifies the agent's representations made at the time of the sale and in relation to it, and is bound by them.

The whole subject of mercantile agency is influenced and governed by mercantile usage. Thus, as to the difference between factors and brokers, the law adopts a distinction usual among merchants, although it may not always be regarded by them. A factor is a mercantile agent for sales and purchases, who has possession of the goods; a broker is such agent, but without possession of the goods. Hence, a factor may act for his principal, and yet in his own name, because the actual owner, by delivering to him the goods, gives to him the appearance of an owner; but a broker must act only in the name of his principal.

A purchaser of goods from a factor may set off against the price a debt due from the factor, unless he buys the goods knowing that they are another's; not so, if the purchaser buy from a broker. Again, a factor has a lien on the goods for his claims against his principal; but a broker generally has not.

One may be a factor as to all rights and duties, who is called a *broker;* as an exchange-broker, who has notes for sale on discount, certificates of stock, etc., delivered into his possession; and such broker, being actually a factor, would have a lien on the policies of insurance or other documents held by him, for his commissions and charges about those documents.

A cashier of a bank, or other official person, may be an agent for those whose officer he is, or for others who employ him. He has, without special gift, all the authority necessary or usual to the transaction of his business. But he cannot bind his employers by any unusual or illegal contract made with their customers. The same law, and the same qualifications, apply to the case of officers of railroad companies, or other corporations. Their acts bind their employers or companies, so far as they have authorized those acts, or have justified those who dealt with the officers in believing that the officers possessed such authority but no further.

Nor would the acts or permissions of such officer have any validity if they violate his official duties, and are certainly and obviously beyond his power, even if sanctioned by his directors; as if the cashier of a bank permitted overdrawing, or the like. And all parties who deal with such agent in such a transaction would be unable to hold the principal; for the law would consider them as knowing that the officer could have no right to do such things.

Therefore, the general agent of a corporation, clothed with a certain power by the charter or the lawful acts of the corporation, may use that power for an authorized, or even a prohibited purpose, in his dealings with an innocent third party, and render the corporation liable for his acts, if they be really within the power given him, or seem to be within it by the fault or act of the corporation ; but not otherwise. Thus, a treasurer of a corporation has no power to release a claim which belongs to the corporation.

SECTION III.

EXTENT AND DURATION OF AUTHORITY.

A GENERAL authority may continue to bind a principal after its actual revocation, if the agency were known, and the revocation be wholly unknown to the party dealing with the agent, without that party's fault.

An authority to sell implies an authority to sell on credit, if that be usual ; otherwise not ; and if an agent sells on credit without any authority, or by exceeding his authority, the principal may claim his goods from the purchaser, or hold the agent responsible for their price. Neither an auctioneer, nor a broker employed to sell, has any right to sell on credit, unless this authority is given him expressly, or by some known and established usage. And the agent is generally responsible if he mixes the goods of his principal with his own, in such a manner as to confuse them together, or takes a note payable to himself, unless this be authorized by the usage of the trade.

If the agent (or factor) takes a note payable to himself, and becomes bankrupt, such note belongs to his principal, and not to the agent's assignees.

A power to sell gives a power to warrant, where there is a distinct usage of making such sales with warranty, and the want of authority to warrant is unknown to the purchaser, without his fault ; and not otherwise. Thus, it has been held that an authority to sell a horse implies an authority to sell with warranty, because horses are usually sold with warranty. A general authority to sell goods carries with it an authority to sell by sample. General authority to transact business, or even to receive and discharge debts, does not enable an agent to accept or indorse bills or notes, so as to charge his principal. Indeed, special authorities to indorse are construed strictly. But this authority may be implied from the previous usage of the agent, recognized and sanctioned by the principal. Where a confidential clerk was accustomed to draw bills for his employer, and this employer had authorized him in one instance to indorse, and on two other occasions had received money obtained by his indorsement of his employer's name, the court held that a jury might consider the clerk authorized generally to indorse for his employer. An agent to receive cash has no authority to take bills or notes, except bank-notes.

If an agent sells and makes a material representation which he believes to be true, and the principal knows it to be false, and does not correct it, this is the fraud of the principal, and avoids the sale.

If an agency be justly implied from general employment, it may continue so far as to bind the principal after his withdrawal of the authority, if that withdrawal be not made known, in such way as is usual or proper, to all who deal with the agent as such.

Revocation, generally, is always in the power and at the will of the principal. His death operates of itself a revocation. But the death of an agent does not revoke the authority of a sub-agent appointed by the agent under an authority given him by the principal. If the power be coupled with an interest,—as where one gives a person power to sell goods and apply the money for his own benefit, or the like,—or if it is given for a valuable consideration, and the continuance of the power is requisite to make the interest available, then it cannot be revoked at the pleasure of the principal. Marriage of a woman revokes a revokable authority given by her while single.

If an agent to whom commercial paper is given for collection be negligent or mistaken about it, and so in fault towards his principal, the measure of his responsibility is the damage actually sustained by his principal.

If a bank receive notes or bills for collection, although charging no commission, the possible use of the money is consideration enough to make them liable as agents having compensation; that is, liable for any want of due and legal diligence and care.

But if the bank exercise proper skill and care in the choice of a collecting agent, or of a notary, or other person or officer, to do what may be necessary in relation to the paper committed to them, the bank is not liable for *his* want of care or skill.

In general, an exigency, or even necessity, which would make an extension of the power of an agent very useful to his employer, will not give that extension. A master of a ship, however, may sell it, in case of necessity, or pledge it by bottomry, to raise money. But this is a peculiar effect of the law-merchant, to be considered more fully in the chapter on the Law of Shipping; and no such general rule applies to ordinary agencies.

SECTION IV.

THE EXECUTION OF AUTHORITY.

Generally, an authority must be conformed to with great strictness and accuracy; otherwise, the principal will not be bound, although the agent may be bound personally. But the old strictness is now abated considerably; and, whatever be the form or manner of the signature of a simple contract, it will be held to bind the principal, if that were the certain and obvious intent. In the case of sealed instruments, the ancient severity is more strictly maintained.

That the authority must be conformed to with strict accuracy, in all matters of substance, is quite certain; but the whole instrument will be considered, in order to ascertain the intention of the parties and the extent of authority. A power given to two cannot be executed by one; but some exception to the rule as to joint power exists in the case of public agencies, and also in many commercial transactions. Thus, either of two factors—whether partners or not—may sell goods consigned to both. And where there are joint agents, whether partners or not, notice to one is notice to both.

In commercial matters, usage, or the reason of the thing, may sometimes seem to add to an authority; so far, at least, as is requisite for the full discharge of the duty committed to the agent in the best and most complete manner. Thus, it is held that an agent to get a bill discounted may indorse it in the name of his principal, unless he is expressly forbidden to indorse. So a broker, employed to procure insurance, may adjust a loss under the same; but he cannot give up any advantages, rights, or securities of the assured, by compromise or otherwise, without special authority.

SECTION V.

LIABILITY OF AN AGENT.

Generally, an agent makes himself liable by his express agreement, or by transcending his authority, or by a material departure from it, or by concealing his character as agent, or by such conduct as renders his principal irresponsible, or by his own bad faith. If he describes himself as agent for some unnamed principal, he is not liable, unless he is proved to be the real principal. If an agent execute an instrument the language of which would hold him personally, he cannot exonerate himself by showing that in fact he signed it as agent, and that this was known to the other party. Because this would be to vary the terms of a written contract by evidence, which is not permitted, as we have before stated.

A party with whom an agent deals as agent cannot hold him personally, on the ground that he transcended or departed from his authority, if that party knew at the time that the agent did so. If he exceeds his authority, he is liable on the whole contract, although a part of it is within his authority. One who, having no authority, acts as agent, is personally responsible. But if an agent transcends his authority through an ignorance of its limits, which is actual and honest, and is not imputable to his own neglect of the means of knowledge, he would not be held, unless an innocent party dealing with him as agent would otherwise suffer loss.

SECTION VI.

RIGHTS OF ACTION GROWING OUT OF AGENCY.

If an agent intrusted with goods sell the same without authority, the principal may affirm the sale, and sue the buyer for the price, or he may disaffirm the sale, and recover the goods from the buyer.

In case of a simple contract, that is, a contract not under seal, an undisclosed principal may show that the nominal party was actually his agent, and thus make himself actually a party to the contract, and sue upon it; but if the other party has previously in good faith settled with the supposed agent, or paid him anything, in cash or by charge, or in account, this other party must not lose by the coming forward of the principal. So, too, an undisclosed principal, when discovered, may be made liable on such contract; but would be protected, if his accounts or relations with his agent had been in the meantime changed in good faith, so as to make it detrimental to him to be held liable. If one sells to an agent, knowing him to be an agent, and knowing who is his principal, and elects to charge the goods to the agent alone, he cannot afterwards transfer the charge to the principal.

Notice to an agent, before the transaction goes so far as to render the notice useless, is notice to the principal. And knowledge obtained by an agent in the course of the transaction itself is the same thing as knowledge of the principal. Notice to an officer or member of a corporation is notice to that corporation, if the officer or member, by appointment, or by usage, had authority to receive it for the corporation; but notice to any member is not necessarily notice to a corporation.

SECTION VII.

HOW A PRINCIPAL IS AFFECTED BY THE ACTS OF HIS AGENT.

If an agent makes a fraudulent representation, a principal would be liable for resulting injury, although personally ignorant and innocent of the wrong; nor can he take any benefit therefrom. A principal cannot, of course, restrict his liability by calling himself an agent, although this is sometimes attempted.

Payment to an agent of money due to the principal binds the principal only when it is made to the agent in the regular course of business. Payment to a sub-agent appointed by the agent, but whose appointment is not authorized by the principal, binds the agent, and renders him liable to the principal for any loss of the money in the sub-agent's hands. Where a legacy was left to a tradesman, and the executors paid it to a shopman who was in the habit of receiving daily payments, this was held not a sufficient payment to discharge the executors. And, generally, a shopman authorized to receive money at the counter, or any person authorized to receive money at any particular place or in any particular way, is not thereby authorized to receive it in any other place or in any other way. Nor is the principal bound, if the agent be authorized to receive the money, but, instead of actually receiving it, discharge a debt due from him to the payer, and then give a receipt as for money paid to his principal, unless it can be shown that he has special authority to receive payment in this way, or that such payment is justified by known usage.

In general, although a principal may be responsible for the deliberate fraud of his agent in the execution of his employment, he is not responsible for his *criminal* acts, unless he expressly commanded them. There is, however, a class of cases in which the principal has intrusted property to his agent, and the agent has used it illegally; and this act of the agent is evidence, which, if unexplained and unanswered, suffices to render the principal liable criminally, without proof of his direct participation in the act itself. The smuggling of goods, the issue of libellous publications, and the sale of intoxicating liquors, by agents, belong to this class.

SECTION VIII.

MUTUAL RIGHTS AND DUTIES OF PRINCIPAL AND AGENT.

An agent cannot depart from his instructions without making himself liable to his principal for the consequences. In determining the purport or extent of his instructions, custom and usage in like cases will often have great influence; because, on the one hand, the agent is entitled to all the advantages which a known and established usage would give him; and, on the other, the principal has a right to expect that his agent will conduct himself according to such usage. But usage is never permitted to prevail over express instructions. A principal who accepts the benefit of an act done by his agent beyond or aside from his instructions, discharges the agent from responsibility therefor. And any unnecessary delay in renouncing the transaction, or any endeavor to wait and make a profit out of it, is an acceptance of the act. But if the agent has bought goods for his principal without authority, the latter may renounce the purchase, and, nevertheless, hold the goods as security for his money, if that has been advanced on them.

In general, every agent is entitled to indemnity from his principal, when acting in obedience to his lawful orders, or when he, in conformity with his instructions, does an act which is not wrong in itself, and which he is induced by his principal to suppose right at that time.

An attorney or agent cannot appoint a sub-attorney or agent, unless authorized to do so expressly, or by a certain usage, or by the obvious reason and necessity of the case. Thus, a consignee or factor for the sale of merchandise may employ a broker to sell, when this is the usual course of business. A sub-agent, appointed without such authority, is only the agent of the agent, and not the agent of the principal; unless his appointment is in some way authorized or confirmed and ratified by the principal.

An agent is bound to use, in the affairs of his principal, all that care and skill which a reasonable man would use in his own. And he is also bound to the utmost good faith. Where, however, an agent acts gratuitously, without an agreement for compensation, or any legal right to compensation growing out of his services, he will not be held responsible for other than gross negligence. A strictly gratuitous agent will be held responsible for property intrusted to him, if it be lost or injured by his gross negligence.

For any breach of duty, an agent is responsible for the whole injury thereby sustained by his principal; and, generally, a verdict against the principal for misconduct of the agent measures the claim of the principal over against the agent. The loss must be capable of being made certain and definite; and then the agent is responsible, if it could not have happened but for his misconduct, although not immediately caused by it. Thus, where an insurance-broker was directed to effect insurance on goods "from Gibraltar to Dublin," and caused the policy to be made, "beginning from the lading of the goods on board," and they were laden on board at Malaga, and went thence to Gibraltar, and sailed for Dublin, and were lost on the voyage, so that the policy did not cover them because they were not laden at Gibraltar, this was held to be gross negligence on his part, and he was held responsible for the value of the goods.

If any agent embezzles his employer's property, it is quite clear that the employer may reclaim it whenever and wherever he can distinctly trace and identify it. But if it be blended indistinguishably with the agent's own goods, and the agent die or become insolvent, the principal can claim only as a common creditor, as against other creditors; but as against the factor or agent himself, the whole belongs in law to the principal; because the factor or agent had no right thus to mix up the property of another with his own, and if he chooses to do so, he must lose all of his own property that cannot be separated from that which is not his own.

An agent employed to sell property cannot buy it himself; nor, if employed to buy, can he buy of himself; unless expressly authorized to do so. Nor can a trustee purchase the property he holds in trust for another. But the other party may ratify and confirm such sale or purchase by his agent; and he will do this by accepting the proceeds and delaying any objection for a long time after the wrongful act is made known to him. And if a trustee or agent to sell property buys it, not in his own name, but through somebody else, the sale is void.

Among the obvious duties of all agents is that of keeping an exact account of their doings, and particularly of all pecuniary transactions. After a reasonable time has elapsed, the court will presume that such an account was rendered, accepted, and settled. Otherwise, every agent might always remain liable to be called upon for such account. Moreover, he is liable not only for the balances in his hands, but for interest; or even, where there has been a long delay to his own profit, he might be liable for compound interest, on the same ground on which it has been charged in similar cases against executors, trustees, and guardians. No interest whatever would be charged, if such were the intention of the parties, or the effect of the bargain between them; and this intention may be inferred either from direct or circumstantial evidence,—as the nature of the transaction, or the fact that the principal knew that the money lay useless in the agent's hands, and made no objection or claim.

The general rule is, that a principal may revoke his agency, and an agent may throw up the agency, at pleasure. But neither would be permitted to exercise this power in an unfair and injurious manner which circumstances do not require or justify, without being responsible to the other party for any damages caused by his wrongful act.

Insanity revokes authority, especially if legally ascertained. But if the principal, when sane, gave an authority to his agent, and a third party acts with the agent in the belief of his authority, but after the insanity of the principal has revoked it, the insanity not being known to this third party, this revocation will not be permitted to take effect to the injury of this third party.

SECTION IX.

FACTORS AND BROKERS.

All agents who sell goods for their principals, and guarantee the price, are said in Europe to act under a *del credere commission.* In this country, this phrase is seldom used, nor is such guaranty usually given, except by commission-merchants. And where such guaranty is given, the factor is so far a surety, that his employers must first have recourse to the principal debtor. Still his promise is not "a promise to pay the debt of another," within the Statute of Frauds. Nor does he guarantee the safe arrival of the money received by him in payment of the goods, and transmitted to his employer, but he must use proper caution in sending it. And if it is agreed that he shall guarantee the remittance, and charge a commission for so doing, he is liable, although he does not charge the commission. If he takes a note from the purchaser, this note is his employer's; and if he takes depreciated or bad paper, he must make it good.

A broker or factor is bound to the care and skill properly belonging to the business which he undertakes, and is responsible for the want of it.

A factor intrusted with goods may pledge them for advances to his principal, or for advances to himself to the extent of his lien for charges and commissions. And his power to pledge them, which grows out of the law-merchant, has been much enlarged by statute in many of our States.

The mere wishes or intimations of his employer, if sufficiently distinct, have the force of instructions. Thus, in New York, a principal wrote to his factor, stating that he thought there was a short supply of the goods he had consigned, and giving facts on which his opinion was founded, and concluded, "I have thought it best for you to take my pork out of the market for the present, as thirty days will make an important change in the value of the article." This was considered by the court to be a distinct instruction, binding upon the factor; and he was therefore held liable for the loss caused by selling the pork within the thirty days.

All instructions the agent or factor must obey; but may still, as we have already stated, depart from their letter, if in good faith, and for the certain benefit of his employer, in an unforeseen exigency. Having possession of the goods, he may insure them; but is not bound to do so, nor even to advise insurance, unless requested, or unless a distinct usage makes this his duty. He has much discretion as to the time, terms, and manner of a sale, but must use this discretion in good faith. For a sale which is precipitated by him without reason and injuriously is void, as unauthorized. If he send goods to his principal without order, or contrary to his duty, the principal may return them, or, acting in good faith and for the benefit of the factor, may sell them as the factor's goods.

Although a factor charges no guaranty commission, he is liable to his principal for his own default; so he is if he sells on credit, and, when it expires, takes a note to himself; but if he takes at the time of the sale a negotiable note from a party in fair credit, and the note is afterward dishonored, this is the loss of his employer, unless the factor has guaranteed it.

If he sells the goods of many owners to one purchaser, taking a note for the whole to himself, and gets it discounted for his own use or accommodation, he is then liable without any guaranty for the payment of that note. So he is if he gets discounted for his own use a note taken wholly for his principal's goods. But he may discount the note to reimburse himself for advances, without making himself liable. If he sends his own note for the price to his employer, he must pay it.

As a factor has possession of the goods, he may use his own name in all his transactions, even in suits at law: but a broker can buy, sell, receipt, &c., only in the name of his employer. So, a factor has a lien on the goods in his hands for his advances, his expenses, and his commissions, and for the balance of his general account. And the factor may sell from time to time enough to cover his advances, unless there be something in his employment or in his instructions from which it may be inferred that he had agreed not to do so. But a broker, having no possession, has no lien. The broker may act for both parties, and often does so. But, from the nature of his employment, a factor should act only for the party employing him.

A broker has no authority to receive payment for the goods he sells, unless that authority be given him, expressly or by usage. Nor will payment to a factor discharge a debtor who has received notice from the principal not to make such payment.

Generally, neither factor nor broker can claim their commissions until their whole service be performed, and in good faith, and with proper skill, care, and industry; and their negligence may be given in evidence either to lessen their compensation or commissions, or to bar them altogether. But if the service begins, and is interrupted wholly without their fault, they may claim a proportionate compensation. If either bargains to give his whole time to his employer, he will not be permitted to derive any compensation for services rendered to other persons. Nor can either have any valid claim against any one for illegal services, or those which violate morality or public policy.

A principal cannot revoke an authority given to a factor, after advances made by the factor, without repaying or securing the factor.

The distinction between a *foreign* and a *domestic* factor is quite important, as they have quite different rights, duties, and powers, by the law-merchant generally. A domestic factor is one who is employed and acts in the same country with his principal. A foreign factor is one employed by a principal who lives in a different country; and a foreign factor is as to third parties—for most purposes and under most circumstances—a principal. Thus, they cannot sue the principal, because they are supposed to contract with the factor alone, and on his credit, although the principal may sue them; and a foreign factor is personally liable, although he fully disclose his agency, and his principal is known.

The following forms of powers of attorney are those most frequently required; and from them, by suitable alterations, powers of attorney may be framed for any purpose:

(71.)

Power of Attorney.

Know all Men by these Presents, That I (*the name of the principal or party appointing*) of (*residence*) have constituted, ordained, and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put (*name of attorney*) to be my true, sufficient, and lawful attorney for me and in my name and stead to (*here set forth the purposes for which the power is given*)

Giving and hereby granting unto him, the said attorney, full power and authority in and about the premises; and to use all due means, course, and process in law, for the full, effectual, and complete execution of the business afore described; and in my name to make and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on my behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also to submit any matter in dispute, respecting the premises, to arbitration or otherwise: with full power to make and substitute, for the purposes aforesaid, one or more attorneys, under him, my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply and effectually, to all intents and purposes, as I the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised. I the said constituent ratifying, allowing, and holding firm and valid all whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal this day of in the year of our Lord nineteen hundred and

(Signature.) *(Seal.)*

Signed, Sealed, and Delivered in Presence of us

Sometimes a power of attorney is given without any power of substitution. This may be by inadvertence, or because it was not intended that the attorney should substitute anybody in his place. Afterwards, it is desired to give him this power to substitute others. And this may be done by a separate instrument.

(72.)

Power of Substitution.

Know all Men by these Presents, That I by virtue of the power and authority to me given, in and by the letter of attorney of *(the principal)* which is hereunto annexed *(or described without being annexed)*, do make, substitute and appoint *(name of substitute)* as well for me as the true and lawful attorney and substitute of the said constituent named in the said letter of attorney, to do, execute, and perform all and everything requisite and necessary to be done, as fully, to all intents and purposes, as the said constituent or I myself could do it personally present; hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

In Witness Whereof, I have hereunto set my hand and seal the day of in the year of our Lord one thousand nine hundred and

(Signature.) *(Seal.)*

Executed and Delivered in the Presence of

(73.)

Power of Attorney in a Shorter Form.

Know all Men by these Presents, That I *(name of principal)* have made, constituted and appointed, and by these presents do make, constitute and appoint *(name of attorney)* my true and lawful attorney for me and in my name, place, and stead to

(here describe the thing to be done)

giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal the day of in the year one thousand nine hundred and

(Signature.) *(Seal.)*

Executed and Delivered in the Presence of

(74.)

Full Power of Attorney to demand and recover Debts.

Know all Men by these Presents, That I *(name of principal)* have constituted, ordained and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put *(name of attorney)* to be my true, sufficient and lawful attorney for me and in my name and stead, and to my use, to ask, demand, levy, require, recover and receive of and from all and every person or persons whomsoever the same shall or may concern, all and singular sum and sums of money, debts, goods, wares, merchandise, effects and things, whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming unto me the constituent, by any ways and means whatsoever.

Giving and hereby Granting unto my said attorney full and whole strength, power and authority in and about the premises; and to take and use all due means, course and process in the law, for the obtaining and recovering the same; and of recoveries and receipts thereof, and in my name to make, seal and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent before any governor, judges, justices, officers and ministers of the law whatsoever, in any court or courts of judicature, and there, on my behalf, to answer, defend and reply unto all actions, causes, matters and things whatsoever, relating to the premises. Also to submit any matter in dispute to arbitration or otherwise, with full power to make and substitute one or more attorneys under my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever, relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I the said constituent if present, ought or might personally, although the matter should require more special authority than is herein comprised, I the said constituent ratifying, allowing and holding firm and valid, all and whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal, this day of in the year of our Lord one thousand nine hundred and

(Signature.) *(Seal.)*

Signed, Sealed and Delivered in presence of us,

(75.)

Power of Attorney to sell and deliver Chattels.

Know all Men by these Presents, That I, the undersigned, for value received, do hereby constitute and appoint to be my true and lawful attorney, for me and in my name and behalf, to sell, transfer, and deliver unto or any other person or persons (*here describe the things to be sold*) And further, one or more persons under him to substitute with like power.

In Witness Whereof, I have hereunto set my hand and seal this day of 19 .

(*Witnesses.*) (*Signature.*) (*Seal.*)

(76.)

Power of Attorney given by Seller to Buyer.

Know all Men by these Presents, That I for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto (*name of the buyer*) the following articles, namely, (*describe the articles*) and I do hereby constitute and appoint the said (*the buyer*) my true and lawful attorney irrevocable, for me and in my name and stead, but to his use, to sell, assign, transfer, and set over all or any part of the said (*the goods*) and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal, the day of one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

(77.)

Power of Attorney to sell Shares of Stock, with Appointment by Attorney of Substitute.

Know all Men by these Presents, That, for value received, I (*name of the principal*) of do hereby make, constitute, and appoint irrevocably, my true and lawful attorney (with power of substitution), for and in my name and on my behalf, to sell, assign, and transfer unto (*name of buyer*) share now standing in my name in the capital or joint stock of the And my said attorney is hereby fully empowered to make and pass all necessary acts for the said assignment and transfer.

Witness my hand and seal, 19 .

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

For value received, I appoint, irrevocably, (*name of the substitute*) as my substitute, with all the powers above given to me.

Witness my hand and seal, 19 .

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

(78.)

Power of Attorney to Subscribe for Stock.

Know all Men by these Presents, That I, the undersigned, do hereby irrevocably constitute and appoint to be my true and lawful attorney, for me and in my name and behalf to subscribe for shares in the capital stock of the And further, one or more persons under him to substitute with like power.

In Witness Whereof, I have hereunto set my hand and seal, this day of 19 .

Witnesses present, (*Seal.*)

(79.)

Proxy, or Power of Attorney to Vote.

Know all Men by these Presents, That I (*name of the principal*) of do hereby appoint to be my substitute and proxy for me, and in my name and behalf to vote at any election of directors or other officers, and at any meeting of the stockholders of the , as fully as I might or could were I personally present.

In Witness Whereof, I have hereunto set my hand and seal, this day of 19 .

Witnesses present, (*Signature.*)

(80.)

Proxy, Revoking all Previous Proxies.

Know all Men by these Presents, That I, the undersigned, stockholder in the (*name of the company*) do hereby appoint my true and lawful attorney, with power of substitution, for me and in my name to vote at the meeting of the stockholders in said company, to be held at or at any adjournment thereof, with all the powers I should possess if personally present, hereby revoking all previous proxies.

19 .

Witness, (*Signature.*)

(81.)

Proxy, with Affidavit of Ownership, in Use in New York.

Know all Men by these Presents, That I, do hereby constitute and appoint my attorney and agent for me and in my name, place, and stead, to vote as my proxy at any election of directors of the according to the number of votes I should be entitled to vote if then personally present.

In Witness Whereof, I have hereto set my hand and seal, this day of one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

I do swear (*or affirm*) that the shares on which my attorney and agent in the above proxy is authorized to vote, do not belong, and are not hypothecated to the said company, and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to me for the purpose of enabling me to vote thereon at the ensuing election, and that I have not contracted to sell or transfer them upon any condition, agreement, or understanding, in relation to my manner of voting at the said election.

Sworn to this day of 19 *, before me,*

(*Signature.*)

(82.)

Power to Receive Dividend.

Know all Men by these Presents, That I, of do authorize, constitute, and appoint to receive from the (*name of the company*) the dividend now due to me on all stock standing to my name on the books of the said company, and receipt for the same; hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

Witness my hand and seal, this day of 19 .

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

CHAPTER XVIII.

PARTNERSHIP.

SECTION I.

WHAT A PARTNERSHIP IS.

WHEN two or more persons combine their property, labor, or skill, for the transaction of business for their common profit, they enter into partnership. Sometimes the word "firm" is used as synonymous with partnership; sometimes, however, it means only the copartnership-name.

A single joint transaction, out of which, considered by itself, neither profit nor loss arises, will not create a partnership. If a joint purchase be made, and each party then takes his distinct and several share of the goods, this is no partnership.

Any persons competent to transact business on their own account may enter into partnership for that purpose, and no others.

SECTION II.

HOW A PARTNERSHIP MAY BE FORMED.

No especial form or manner is necessary. It may be by oral agreement, or by a written agreement, which may have a seal or not. But the liability and authority of the partners begin with the *actual* formation of the partnership, and do not wait for the execution of any articles. In general, if there be an agreement to enter into business, or into some particular transaction, together, and share the profits and losses, this constitutes a partnership, which is just as extensive as the business proposed to be done, and not more so. The parties may agree to share the profits in what proportion they choose; but in the absence of any agreement, the law presumes equal shares.

They may agree as to any way of dividing the losses, or even that one or more partners alone shall sustain them all, without loss to the rest. And this agreement is valid as between themselves; but it will not protect those partners who were to sustain no loss from responsibility to third parties, unless the third parties knew of this agreement between the partners, and gave credit accordingly. If A, B, & C, being partners, agree that A should not lose anything by their business, and a person knowing this bargain dealt with the firm on the credit of B & C, he could not call on A. But an agreement exempting partners from loss generally, or from loss beyond the amount invested, will only operate between the partners, unless it can be shown that the third party not only knew the agreement, but contracted with the firm on the basis of this agreement. And, generally, stipulations in articles of copartnership limiting the power of a partner, are not binding on third parties who are ignorant of them. Each partner is absolutely responsible to every creditor of the copartnership for the whole amount of the debt. And if thereby obliged to suffer loss, his only remedy is against the other partners.

Although partners may agree and provide as they will in their articles, a long neglect of these provisions will be regarded as a mutual waiver of them.

Persons may be liable as partners to third parties or strangers, who are not partners as between themselves. Whether they are partners as to each other would generally be determined by the intention of the parties, as drawn from their contract,—whether oral or written,—under the ordinary rules of evidence and construction. But whether one is liable as a partner to one who deals with the firm must depend in part upon his intention, but more upon his acts; for if by them he justifies those who deal with the firm in thinking him a partner in that business, he must bear the responsibility; as if he declare that he has a joint interest in the property, or conducts the business of the firm as a partner, accepting bills, or suffers his name to be used upon cards, or in advertisements, or on signs, or in any similar manner. The declarations or acts of one person cannot, however, make another person liable as partner, without co-operation or consent, by word or act, on his part. The rule is this: that one who thus holds himself out as a partner, when he really is not one, is responsible to a creditor who on these grounds believed him to be a partner; but not to one who knew nothing of the facts, or who, knowing them, knew also that this person was not a partner.

A *secret* partner is one who is actually a partner by participation of profit, but is not avowed or known to be such; and a *dormant* partner is one who takes no share in the conduct or control of the business of the firm. Both of these are liable to creditors (even if the creditors did not know them to be members of the firm), on the ground of their interest and participation in the profits, which constitute, with the property of the firm, the funds to which creditors may look for payment. A *nominal* partner is one who holds himself out to the world as such, but is not so in fact. He is liable to creditors of the firm, on the ground that he justifies them in trusting the firm on his credit, and, indeed, invites them to do so by declaring himself to be a partner.

The principal test of membership in a mercantile firm is said to be the participation in the profits. Thus, if one lend money to be used in a business, for which he is to receive a share in the profits, this would make him a partner ; and if he is to receive lawful interest, and, in addition thereto, a share of the profits, this would generally make him liable as a partner to a creditor of the firm.

Sometimes a clerk or salesman, or a person otherwise employed for the firm, receives a share of the profits, instead of wages. Formerly it was held, that if such person received any certain share, say "one-tenth part of the net annual profits," this made him liable as a partner ; but if he received "a salary equal in amount to one-tenth of the net profits," this did not make him a partner. Now, the courts would look more at the actual intention of the parties, and their actual ownership of an interest in the funds of the partnership, and not be governed by the mere phraseology used. If in fact he works for wages, although these wages are measured by the profits, he is no partner, and therefore not liable for the debts, as every partner is.

Hence, factors and brokers for a commission on the profits, masters of vessels who engage for a share of the profits, or seamen employed in whale-ships, are none of them partners.

A partnership usually has but one business name ; but there does not seem to be any legal objection to the use of two names, especially for distinct business transactions ; as A B & Co. for general business, and the name of A C & Co. for the purpose of making or indorsing negotiable paper.

SECTION III.

HOW A PARTNERSHIP MAY BE DISSOLVED.

If the articles between the partners do not contain an agreement that the partnership shall continue for a specified time, it may be dissolved at the pleasure of either partner.

But no partner can exercise this power wantonly and injuriously to the other partners, without making himself responsible for the damage he thus causes. If there be a provision that the partnership shall continue a certain time, this is binding.

If either partner were to undertake to assign his interest, for the purpose of withdrawing from the firm, against the will of the partners, without good reason, and in fraud of his express agreement, a court of equity would interfere and prevent him. For the assignment of a partner's interest, or of his share of the profits, operates at once a dissolution of the partnership.

Such assignment may transfer to the assignee the whole interest of the assignor, but cannot give him a right to become a member of the firm. There seems to be an exception to this rule where the partnership is very numerous, and the manner of holding shares, by scrip or otherwise, indicates the original intention of making the shares transferable. Such a partnership is in effect a joint-stock company; which form of association is not usual here, because incorporation is better, and is easily obtained.

Death of a general or even of a special partner operates a dissolution; and the personal representatives of the deceased do not take his place, unless there be in the articles an express provision that they shall. And such provisions are construed as giving the heirs or personal representatives the right of electing whether to become partners or not. If either party is unable to do his duty to the partnership, as by reason of insanity or a long imprisonment, or if he be guilty of material wrong-doing to the firm, a court of equity will decree a dissolution. And if the original agreement were tainted with fraud, the court will declare it void, from its beginning.

Whenever a court of equity decrees a dissolution of the partnership, it will also decree that an account be taken between the partners, if requested by either partner. And if necessary to do justice, it will decree a sale of the effects and a distribution of the proceeds, after a consideration of all the facts of the case and the whole condition of the firm. Such a decree will be made if a partner die or become bankrupt.

If the whole interest of a copartner is levied upon and sold on execution, this makes a dissolution, and the purchaser becomes,—like every other assignee of a partner,—not a partner, but only a tenant in common (that is, a joint owner) with the other partners; but if the levy and sale are only of a part, which may be severed from the rest, this may not operate a dissolution except as to that part.

If one partner retires, this operates in law a dissolution, and the remaining partners constitute in law a new firm, although in fact the old firm frequently continues and goes on with its business, with or without new members, as if it were the same firm.

The partner retiring should withdraw his name from the firm, and give notice, by the usual public advertisement, of his retirement, and also, by personal notice, by letter or otherwise, to all who usually do business with the firm; and after such notice he is not responsible, even if his name be retained in the firm by the other partners, if this is done without his consent. Nor is he responsible to any one who has in any way actual knowledge of his retirement.

A dormant or secret partner is not liable for a debt contracted after his retirement, although he give no notice, because his liability does not rest upon his giving his credit to the firm, but upon his being actually a partner.

SECTION IV.

THE PROPERTY OF THE PARTNERSHIP.

A PARTNERSHIP may hold real estate as well as personal estate, and a partnership may be formed to trade in land, or to cultivate land. But the rules of law in respect to real estate, as in relation to title, conveyance, dower, inheritance, and the like, make some difference. As far, however, as is compatible with these rules, it seems to be agreed that the real estate of the partnership is treated as if it were personal property, if it have been purchased with the partnership funds and for partnership purposes.

There is some difficulty in explaining this matter to those who are not acquainted with the peculiar law of real estate.

Thus, no sale of land is valid except by deed, recorded; and only one who is thus a grantee under seal by record has a *legal* title. But a court of equity acknowledges and protects an *equitable* title in those who really possess all the interest in the land, as partners do who have paid for it, though it stands in the name of one partner only. But a court of equity cannot disregard the laws of conveyance and record, and therefore say that this partner is the only *legal owner*, but that he owns the land as *trustee* for the firm. And then they compel him to sell it, or otherwise dispose of it, as the interests of the firm or of their creditors require.

So land thus purchased does not go to the heirs of the partner or partners in whose name it may stand, but is first subject to the debts of the firm, and then to the balance which may be due to either partner on winding up their affairs. But when these debts and claims are adjusted, any surplus of the real estate will then descend as real estate, and not as personal estate.

Improvements made with partnership funds on the real estate of a partner will be regarded as partnership property.

The widow has her dower only after the above-mentioned debts and claims are adjusted. And while the legal title is protected, as it must be for the purpose of conveyance and other similar purposes, the person holding this legal title will be held as a trustee for the partnership if the partnership be entitled to the beneficiary interest.

But a purchaser of partnership real property, without notice or knowledge, from a partner holding the same by legal title, is protected against the other partners. If, however, the purchaser has such knowledge, the conveyance may be avoided as fraudulent, or he may be held as trustee, the land being in his hands chargeable with the debts and claims of the partnership.

SECTION V.

THE AUTHORITY OF EACH PARTNER, AND THE JOINT LIABILITY OF THE PARTNERSHIP.

THIS authority is very great, because the law-merchant makes each partner an agent of the whole partnership, with full power to bind all its members and all its property, in transactions which fall within the usual business of the firm; as loans, borrowing, sales—even of the whole stock, pledges, mortgages, or assignments; and this last extends even to an honest and prudent assignment of the whole stock and personal property to trustees to pay partnership debts. It extends to the making or indorsing negotiable paper, and to transactions out of the usual business of the firm, if they arose from and were fairly connected with that business.

Nor is any party dealing with a partner affected by his want of good faith towards the partnership, unless he colluded with the partner, and participated in his want of good faith, by fraud or gross negligence. But a holder of a note or bill signed or indorsed by a partner without authority, has no claim against the partnership, if he knew or should have known the want of authority.

A partner cannot, in general, bind the firm by a guaranty, a letter of credit, or a submission to arbitration, without authority, because these things do not belong generally and properly to commercial business. But anything so done by a partner may be adopted and ratified by the partnership, and then it has the same force as if originally authorized. And this ratification may be formal and express, or consist only of acts which distinctly imply it; such as assenting to and acting with reference to it; and especially receiving and holding the beneficial results of it; as, for example, taking and holding money paid for it.

By the earlier and more stringent rules of law, a partner could not bind his copartners by an instrument under seal unless he was himself authorized under seal; and their subsequent acknowledgment of his authority did not cure the defect. Now, however, a partner may bind his firm by an instrument under seal, if it be in the name and for the use of the firm, and in the transaction of their usual business, provided the other copartners consent thereto before execution, or adopt and ratify the same afterwards; and they may assent or ratify by word as well as by seal; or provided he could have made the same conveyance, or done the same act effectually without a deed. And a deed executed by one partner in the presence and with the assent of the other partners, will bind them.

A partnership has no seal at law, and can have none; only a person or a corporation can have a seal. Instruments are sometimes executed "A. B. & Co.," and a seal is affixed to the name. This is, strictly speaking, no seal at all; and if the instrument needs a seal to make it valid, as if it were a deed of land, it would, at law, be wholly void. But the courts in some of our States are somewhat lax on this subject, and might construe it as the seal of each one of the partners to give the instrument validity.

A majority of the members cannot conclusively bind the minority, unless in reference to the internal concerns of the firm; as, for example, the salary or appointment of a clerk, the hiring or fitting-up of a counting-room, the manner of keeping accounts, and the like. But one member may, so far as he is concerned, arrest a negotiation which was only begun, and prevent a bargain which would be binding on him, by giving notice to the third party of his dissent and refusal in season to enable him to decline the bargain without detriment.

Partners must act *as such*, to bind each other. Thus, if a partner makes a note, and signs it with his own name and his partner's name, as a joint and several note, it does not bind his partner, for he had no authority to make such a note.

If the name of one partner be also the name of the firm,—for John Smith and Henry Robinson may do business as partners under the name of "John Smith,"—this name is not necessarily the name of the firm when used in a note or contract; and if the partner whose name is used carries on mercantile business for himself, it will not be supposed to be used as the name of the firm without sufficient proof.

Persons may give a joint order for goods without becoming jointly liable, if it appear otherwise that credit was given to them severally. Nor will one have either the authority or the obligation of a partner cast upon him by an agreement of the firm to be governed by his advice. Nor shall one be charged as partner with others unless he has incurred the liability by his own voluntary act.

The reception of a new member constitutes, in law, a new firm; but the new firm may recognize the old debts, as by express agreement, or paying interest, or other evidence of adoption, and then the new firm is jointly liable for the old debt. But there must be some fact from which the assent of the new member to this adoption of the old debt may be inferred, for his liability is not to be presumed.

A notice in legal proceedings, abandonment to insurers by one who was insured for himself and others, a notice to quit of one of joint lessors or lessees who are partners in trade, notice to one partner of the dishonor of a note or bill bearing the name of the firm, a release to one partner, or by one partner,—will bind all the partners, and render them jointly liable. But a service of legal process should be made upon each partner personally.

If money be lent to a partner for partnership purposes, it creates a partnership debt; but not if lent expressly on the individual credit of the person borrowing; and not if the borrowing partner receives it to enable him to pay his contribution to the capital of the firm. Though the money be not used for the firm, if it was borrowed by one partner on the credit of the firm, in a manner and under circumstances justifying the lender in trusting to that credit, it creates a partnership debt. And if a partner uses funds in his hands as trustee, for partnership purposes, the firm are certainly jointly bound, if it was done with their knowledge. And if it was done without their knowledge, and the partners are distinctly and directly benefited by the transaction, they will be deemed to have authorized it.

If in any case a person, knowing the existence of the firm, gave credit to a single partner only, then he can look only to that partner, and not to the firm, although the money was applied to, and used for, partnership purposes. But if the partner held himself out as borrowing for the firm, and the lender without any want of due care gave credit to the firm, and the transaction was a fair business transaction on the part of the lender, the firm will be liable, although the money is fraudulently appropriated by the partner to his own use.

In the absence of evidence showing to whom the credit was given, the fact that money lent to one partner was applied to the use of the firm will make the firm liable for the payment; but not if the partner employed it as his contribution to increase the capital of the firm.

If the purchaser of goods or the borrower of money have a dormant and secret partner, and the goods were bought or the money borrowed for partnership purposes, the seller or lender may look to both partners for payment, unless the seller or lender, knowing all the partners, gave credit to one only.

The firm is liable only to one who deals with a partner in good faith. Thus, if one receives negotiable paper bearing the name of a firm, knowing that it is not in the business of the firm, and is given for no consideration received by the firm, he cannot hold the firm. And if a creditor of one partner receive for his separate debt a partnership security, this would be a fraud, unless the partner had, or was supposed by the creditor to have, the authority of the rest.

If he supposed the partner had this authority, he cannot hold the partnership if the partner had not the authority, unless the partnership had caused him to believe it. And if the partnership security be transferred for two considerations, one of which is private and fraudulent, and the other is joint and honest, the partnership is bound for so much of it as is not tainted with fraud, and only for that.

The partnership may be liable for injury caused by the criminal or wrongful acts of a partner, if these were done in the transaction of partnership business, and if it was the partnership which gave to the wrong-doer the means and opportunity of doing the wrong. But an illegal contract will not bind the copartners, for the parties entering into it must be presumed to know its illegality; and the law enforces no bargain that is contrary to law.

The acknowledgment of one who had been a partner, after the dissolution of the partnership, may take the debt out of the statute of limitations as to him, but not so as to restore the liability of all the partners without their assent.

SECTION VI.

REMEDIES OF PARTNERS AGAINST EACH OTHER.

It is seldom that a partner can have a claim against another partner, *as such*, which can be examined and adjusted without an investigation into the accounts of the partnership, and, perhaps, a settlement of them. Courts of law have ordinarily no adequate means of doing this; and therefore it is generally true that no partner can sue a copartner at law for any claim growing out of partnership transactions and involving partnership interests. But the objection to a suit at law between partners goes no further than the reason of it; and, therefore, one may sue his copartner upon his agreement to do any act which is not so far a partnership matter as to involve the partnership accounts.

If the accounts are finally adjusted, either partner may sue for a balance; and so it would be if the accounts generally remained open, but a specific part of them were severed from the rest, and a balance found on that. The rule is generally laid down, that an action cannot be sustained by a partner against a partner for a balance, unless there is an express promise to pay it But such promise would be inferred in all cases in which an account had been taken, and a balance admitted to be due.

In general, any action at law between partners can be maintained, only when a rendering of judgment in this action will completely terminate all partnership matters, so that no further cause of action can grow out of them.

What a court of law cannot do as to actions between partners, a court of equity can; and, generally, a court of equity has a full jurisdiction over all disputes and claims between partners, and may do whatever is necessary to settle them in conformity with justice.

A partner may sue his copartner for money advanced before the partnership was formed, although the loan was made to promote the partnership. And for work done for the firm before he became a member of it, he may sue those who were members when he did the work. And he may sue a copartner on his note or bill, although the consideration was on partnership account; but, in general, no action at law can be maintained for work and labor performed, or money expended for the partnership.

A partner who pays more than his proportion of a debt of the partnership cannot demand specific contribution from his copartners, but must charge his payment to the firm. The reason is, that they may have claims against him on other accounts, and they must be all settled together to strike the balance.

If one of a firm be a member also of another firm, the one firm cannot sue the other; for the same person cannot be plaintiff and defendant of record. A cannot sue A; and therefore A, B, & C cannot sue C, D, & E. In all these cases an adequate remedy may be found in a court of equity.

If a firm have a negotiable note which it cannot sue, because one of its own firm is liable upon it and must be made defendant, it can indorse the note over, and the indorsee may sue it in his own name, as we have before stated.

The partners are entitled to perfect good faith from each copartner; and a court of equity will interfere to enforce this. No partner will be permitted to treat privately, and for his own benefit alone, for a renewal of a lease, or to transfer to himself any benefit or interest properly belonging to the firm. And so careful is a court of equity in this respect, that it will not permit a copartner, by his private contract or arrangement, to subject himself to a bias or interest which might be injurious to the firm, and conflict with his duty to them, but will declare void any contract of this kind.

SECTION VII.

RIGHTS OF THE FIRM AGAINST THIRD PARTIES.

If a partner sells the goods of the firm in his own name, the firm may sue for the price. But the rights of one who deals in good faith with a copartner, as with him alone, are so far regarded, that he may set off any claim, or make use of any other defences against the suit of the firm, which he could have made had the person with whom he dealt sued alone.

Therefore, if A honestly bought goods of a firm from a partner whom he supposed to be sole owner of them, and paid him the price, the firm cannot recover this price from the buyer, although the seller sold the goods fraudulently, and cheated the firm out of the money, but must charge the price to the selling partner.

A guaranty to a copartner, if for the use and benefit of the firm, gives to them a right of action.

A new firm, created by some change in the membership of an old firm, is entitled to the benefit of a guaranty given to the old firm, even if sealed, provided it shall distinctly appear that the instrument was intended to have that effect, and extend to the new firm.

SECTION VIII.

RIGHTS OF CREDITORS IN RESPECT TO FUNDS.

The property of a partnership is bound to pay the partnership debts; and, therefore, a creditor of one copartner has no claim to the partnership funds until the partnership debts are paid. If there be then a surplus, he may have that copartner's interest therein, in payment of his private debt.

If a private creditor attaches partnership property, or in any way seeks to appropriate it to his private debt, the partnership debts being unpaid, he cannot hold it, either at law or in equity. Such attachment or appropriation is wholly subject to the paramount claims of the partnership creditors, and is wholly defeated by the insolvency of the partnership, although the partnership creditors have not brought any actions for their debts.

Hence, if a creditor of A attaches his interest in the property of A, B & Co., and a creditor of A, B & Co. attaches the same property, the first attachment is postponed to the second; that is, it has no effect until the debt of the second creditor is fully satisfied, and then it is good for the surplus of property. If, however, one partner is dormant and unknown, the creditor of the other attaching the stock is not postponed to the creditor who discovers the dormant partner and sues him with the others unless the first attaching creditor's claim has no reference to the partnership business, and that of the second attaching creditor has such reference.

The partnership creditors are restrained from appropriating the private property of the copartners until the claims of their private creditors are satisfied in courts of equity. And some recent adjudications indicate that the rule will become established at law.

I think the law ought to be, and that it is now tending to become, this. A partnership is a kind of body by itself, somewhat like a corporation. It has its own funds, and its own debts. The individual members may also have each his own funds and his own debts.

The funds of the partnership should first be applied to the debts of the partnership; and, if there be any surplus, the members have it, and their creditors get it. So the private funds of each member should first be applied exclusively to the payment of that person's private debts; and, when they are wholly paid, the surplus should go to the partnership creditors, because each partner is responsible for the partnership debts. This rule prevails on the continent of Europe very generally.

It is now quite certain that the levy of a private creditor of one copartner upon partnership property can give him only what that copartner has; that is, not a separate personal possession of any part or share of the stock or property, but an undivided right or interest in the whole, subject to the payment of debts and the settlement of accounts; including also the right to demand an account.

As to how such levy and sale of the interest of one copartner shall be made by the sheriff, there is much diversity both of practice and authority. Upon principle, we think the sheriff can neither seize, nor transfer by sale, either the whole stock or any specific portion of it. He should, we think, without any *actual seizure*, sell all the interest of the defendant partner in the stock and property of the partnership; much in the same way in which he would sell his right to redeem a mortgage, or any other incorporeal right, subject to attachment. The purchaser would then have a right to demand an account and settlement, and a transfer to himself of any balance or property to which the copartner whom be sued would have been entitled.

Where the trustee process, or process of foreign attachment, is in use, the better way would be for the sheriff to return a general attachment of all the interest of the debtor in the partnership property, and summon the other partners as the trustees of the debtor.

It must be stated, however, that the rules of law in regard to the liability of partnership property for the private debts of partners, and as to how any such liability may be enforced, are, at present, somewhat obscure and uncertain.

SECTION IX.

THE EFFECTS OF DISSOLUTION.

If the dissolution is caused by the death of any partner, the whole property goes to the surviving partners. They hold it, however, not as their own, but only for the purpose of settlement; and therefore they have, in relation to it, all the power which is necessary for that purpose, and no more. If they carry on the business with the partnership funds, they do so at their own risk; and the representatives of the deceased may require their share of the capital, and choose between calling on them, in addition, for interest, or for a share of the profits.

The survivors are not partners, but tenants in common (joint owners) with the representatives of the deceased of the stock or property in possession; and have all necessary rights to settle the affairs of the concern and pay its debts. After a dissolution, however caused, one who had been a partner has no authority to make new contracts in the name of the firm, as to make or indorse notes or bills with the name of the firm, even if he be expressly authorized to settle the affairs of the firm. There must be a distinct authority to sign for the others who were formerly partners. A parol authority will be sufficient, even if the general terms of the partnership had been reduced to writing.

It is common, where a partnership is dissolved by mutual consent, to provide that some one of the partners shall settle up the affairs of the concern, collect and pay debts, and the like. But this will not prevent any person from paying to any partner a debt due to the firm; and, if such payment be made in good faith, the release or discharge of the partner is effectual.

If all the debts were assigned and transferred to any person, as his property, any debtor who had notice of this would be bound to make payment to this person alone; and if he paid anybody else, he would be obliged to pay the money over again.

It is frequently provided, that one partner shall take all the property and pay all the debts; but this agreement, though valid between the partners, has no effect upon the rights of third parties against the other partners; for they have a valid claim against all the partners, of which they cannot be divested without their consent.

This consent of the creditor may be inferred, but not from slight evidence; thus, not from receiving the single partner's note as a collateral security, nor from receiving interest from him on the joint debt, nor from a mere change in the head of the account, charging the single partner and not the firm. Still, as the creditor certainly can assent to this arrangement, and accept the indebtedness of one partner instead of that of the firm, so it must be equally clear that such assent and intention will bind him, if distinctly proved by circumstances.

SECTION X.

LIMITED PARTNERSHIPS.

THESE have been introduced into some of our States, by statutes, which differ somewhat in their provisions. Generally, they require, first, one or more *general* partners, whose names shall be known; secondly, *special* partners, who do not appear as members, nor possess the powers or discharge the duties of actual partners; thirdly, the sum to be contributed by the special partners shall be actually paid in; lastly, all these arrangements, with such other information as may be needed for the security of the public, must be verified under oath, signatures of all the parties, and acknowledgment before a magistrate, and correctly published. When these requisites are complied with, the special partners may lose all they have put in, but cannot be held to any further responsibility. But any neglect of them, or any material mistake in regard to them, even on the part of the printer of the advertisement, wholly destroys their effect; and then the special partner is liable for the whole debt, precisely like a general partner.

In a New York case, the amount contributed by the special partner was, by mistake of the printer, stated at $5,000, instead of $2,000, and it was held that the associates were liable as general partners, although the plaintiff did not show that he was actually misled by the error. In another New York case, it was held that an assignment of the partnership property, providing for the payment of a debt due to the special partner, ratably with the other creditors of the firm, or before all the other creditors are satisfied in full for their debts, is void as against the creditors; but it would be valid as against the assignor and those creditors who think proper to affirm it.

(83.)

Articles of Copartnership between two Tradesmen.

Articles of Agreement, Had, made, concluded, and agreed upon, this day of A.D. between of trader, and of trader.

First of all, the said and have agreed, and by these presents do agree, to become copartners together in the art or trade of and all things thereto belonging, and also, in buying, selling, vending, and retailing all sorts of wares, goods, and commodities belonging to the said trade of which said copartnership, it is agreed, shall continue from for and during, and unto the full end and term of years, from thence next ensuing, and fully to be complete and ended. And to that end and purpose he the said hath the day of date of these presents, delivered in as stock, the sum of and he the said the sum of to be used, laid out, and employed, in common trade between them, for the management of the said trade of to their utmost benefit and advantage. And it is hereby agreed between the said parties, and the said copartners, each for himself respectively, and for his own particular part, and for his executors and administrators, that each doth covenant, promise, and agree, to and with the other of them, his executors and administrators, by these presents, in manner and form following (that is to say) that they the said copartners shall not nor will, at any time hereafter, use, exercise, or follow the trade of aforesaid, or any other trade whatsoever during the said term, to their private benefit and advantage; but shall and will, from time to time, and at all times, during the said term (if they shall so long live), do their and each of their best and utmost endeavors, in and by all means possible, to the utmost of their skill and power, for their joint interest, profit, benefit, and advantage, and truly employ, buy, sell and merchandise, with the stock aforesaid, and the increase thereof in the trade of aforesaid, without any sinister intentions or fraudulent endeavors whatsoever. And also that they the said copartners shall and will, from time to time, and at all times hereafter, during the said term, pay, bear, and discharge, equally between them, the rent of the shop, which they the said copartners shall rent or hire, for the joint exercising or managing of the trade aforesaid. And that all such gain, profit, and increase, as shall come, grow, or arise, for or by reason of the said trade, or joint business as aforesaid, shall be from time to time, during the said term, equally and proportionably divided between them the said copartners, share and share alike. And also that all such losses as shall happen in the said joint trade, by bad debts, ill commodities, or otherwise without fraud or covin, shall be paid and borne equally and proportionably between them. And further, it is agreed by and between the said copartners, that there shall be had and kept from time to time, and at all times during the said term and joint business and copartnership together as aforesaid, perfect, just, and true books of account, wherein each of the said copartners shall duly enter and set down, as well all money by him received, paid, expended and laid out, in and about the management of the said trade, as also all wares, goods, commodities, and merchandises, by them or either of them bought and sold by reason or means or upon account of the said copartnership, and all other matters and things whatsoever, to the said joint trade, and the management thereof, in anywise belonging or appertaining, which said books shall be used in common between the said copartners, so that either of them may have free access thereto without any interruption of the other. And also that they the said copartners, once in three months, or oftner if need shall require, upon the reasonable request of one of them, shall make, yield, and render, each to the other, or to the executors or administrators of the other, a true, just, and perfect account of all profits and increase, by them or either of them made, and of all losses by them or either of them sustained, and also of all payments, receipts, and disbursements whatsoever, by them or either of them made or received, and of all other things by them or either of them acted, done, or suffered in the said copartnership and joint business as aforesaid; and the same account being so made, shall and will clear, adjust, pay, and deliver, each unto the other, at the time of making such account, their equal shares of the profits so made as aforesaid; and at the end of the said term of   or other sooner determination of these presents (be it by the death of one of the said partners or otherwise), they the said copartners, each to the other, or in case of the death of either of them, the surviving party to the executors or administrators of the party deceased, shall and will make a true, just, and final account of all things as aforesaid, and divide the profits aforesaid, and in all things well and truly adjust the same, and that also upon the making of such final account, all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, whether consisting of money, wares, debts,   shall be equally parted and divided between them the said copartners, their executors or administrators, share and share alike.

In Witness Whereof, &c.

(*Signatures.*)

VARIOUS COVENANTS AND CLAUSES WHICH MAY BE INTRODUCED IN ARTICLES OF COPARTNERSHIP ACCORDING TO CIRCUMSTANCES.

Not to trust any one whom the Copartner shall forbid.

And that neither of the said parties shall sell or credit any goods or merchandise belonging to the said joint trade, to any person or persons, after notice in writing from the other of the said parties, that such person or persons are not to be credited or trusted.

Not to release any Debt without Consent, &c.

And that neither of the said parties shall, without the consent of the other, release or compound any debt or demand, due or coming to them on account of their said copartnership, except for so much as shall actually be received, and brought into the stock or cash account of the said partnership.

Not to be bound, or indorse Bills, &c., for any one without Consent, &c.

And that neither of the said parties shall, during this copartnership, without the consent of the other, enter into any deed, covenant, bond, or judgment, or become bound as bail or surety, or give any note, or accept or indorse any bill of exchange for himself and partner, without the consent of the other first had and obtained, with or for any person whatsoever.

Neither Party to assign his Interest, &c.

And it is agreed between the said parties, that neither of the said parties shall, without the consent of the other, obtained in writing, sell or assign his share or interest in the said joint trade, to any person or persons whatsoever.

Principal Clerk to be Receiver of Moneys, &c.

That the principal clerk for the time being shall be the general receiver of all the money belonging to the said joint trade, and shall thereout pay all demands, ordered by the said parties, and shall from time to time pay the surplus cash to such banker as the said partners shall nominate.

Parties to draw quarterly, &c.

That it shall be lawful for each of them to take out of the cash of the joint stock the sum of quarterly, to his own use, the same to be charged on account, and neither of them shall take any further sum for his own separate use, without the consent of the other in writing; and any such further sum, taken with such consent, shall draw interest after the rate of per cent., and shall be payable together with the interest due, within days after notice in writing given by the other of the said parties.

(84.)

Shorter Form of Articles of Copartnership.

Articles of Agreement, Made the day of one thousand nine hundred and between (*the names and residences of the two parties*) as follows: The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under the name or firm of in the business of and in the buying, selling, and vending all sorts of goods, wares, and merchandise to the said business belonging, and to occupy the their copartnership to commence on the day of and to continue and to that end and purpose the said (*here state the contributions of each of the parties*) to be used and employed in common between them for the support and management of the said business, to their mutual benefit and advantage. And it is agreed by and between the parties to these presents, that at all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ, buy, sell, and merchandise with their joint stock, and the increase thereof, in the business aforesaid. And also that they shall and will at all times during the said copartnership bear, pay, and discharge equally between them, all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit, and increase that shall come, grow, or arise from or by means of their said business, shall be divided between them (*state whether equally, or in what proportions*) and all loss that shall happen to their said joint business, by ill commodities, bad debts, or otherwise, shall be borne and paid between them in the like proportion.

And it is agreed by and between the said parties, that there shall be had and kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods wares, commodities, and merchandise, by them or either of them, bought or sold by reason or on account of the said business, and all other matters and things whatsoever to the said business and the management thereof in any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto, without any interruption or hindrance of the other. And also the said copartners, once in or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account of all profits and increase by them, or either of them, made, and of all losses by them, or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in this said copartnership and business, and the same account so made shall and will clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits so made as aforesaid.

And the said parties hereby mutually covenant and agree to and with each other, that, during the continuance of the said copartnership, neither of them shall nor will indorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end, or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, in the proportions aforesaid.

In Witness Whereof,

(*Signatures.*)

(85.)

Certificate of a Limited Partnership with Acknowledgment, and Oath.

This is to Certify, That the undersigned have, pursuant to the provisions of the Statutes of the State of formed a limited partnership, under the name or firm of that the general nature of the business to be transacted is (*describe the business*) and that the general *partner* and is the special *partner* and that the said (*the special partner*) hath contributed the sum of dollars, as capital towards the common stock, and that the said partnership is to commence on the day of and is to terminate on the day of 19

Dated this day of one thousand nine hundred and

(*Signatures.*)

County of ss. On the day of one thousand nine hundred and before me came

to be the individuals described in, and who executed the above certificate, and they severally acknowledged that they executed the same.

County of ss.

the general *partner* named in the above certificate, being duly sworn, doth depose and say, that the *sum* specified in the said certificate to have been contributed by the special *partner* to the common stock has been actually and in good faith paid in cash.

Sworn this *day of* 19 *before me,*

In some of the States, the oath should be made by the general partner; and it would always be safe for all the partners, general and special, to take the oath, and be included in the certificate.

CHAPTER XIX.

ARBITRATION.

SECTION I.

OF THE SUBMISSION AND AWARD.

The law favors arbitration in many respects as a peaceable and inexpensive mode of settling difficulties. Parties may agree to refer a question by an oral agreement, or by a written agreement. The form is not essential. But it is always best to reduce the agreement to writing, and to express it carefully But parties may, in many of our States, go before a magistrate and agree to refer in the manner pointed out by the statute. In all of them a case may be taken out of court and submitted to referees under an order of court.

The first essential of an award, without which it has no force whatever, is, that it be conformable to the terms of the submission. The authority given to the arbitrators should not be exceeded; and the precise question submitted to them, and neither more nor less, should be answered. Neither can the award affect strangers (or those who are not parties to it); and, if one part of it is that a stranger shall do some act, it is not only of no force as to the stranger, but of no force as to the parties if this unauthorized part of the award cannot be taken away without affecting the rest of the award.

Nor can it require that one of the parties should make a payment, or do any similar act, to a stranger. But if the stranger is mentioned in an award only as agent of one of the parties, which he actually is or as trustee, or as in any way paying for, or receiving for, one of the parties, this does not invalidate the award. And in favor of awards, it has been said that this will be supposed, where the contrary is not indicated.

If the award embrace matters not included in the submission, it is fatal. If, however, the portion of the award which exceeds the submission can be separated from the rest without affecting the merits of the award, it may be rejected, and the rest will stand; otherwise the whole is void. If the submission specify the particulars to which it refers, or if, after general words, it make specific exceptions, its words must be strictly followed.

If these words are very general, they will be construed liberally, but yet without extending them beyond their fair meaning. On the other hand, all questions submitted must be decided, unless the submission provides otherwise; and either party may object to an award, that it omits the decision of some question submitted; but the objection is invalid if it be shown that the party objecting himself withheld that question from the arbitrators. Nor is it necessary that the award embrace all the topics which might be considered within the terms of a general submission. It is enough if it pass upon those questions brought before the arbitrators, and they are so far distinct and independent that the omission of others leaves no uncertainty in the award. If the award does not embrace all of the matters within the submission which were brought to the notice of the arbitrators, it is altogether void.

In the next place, an award must be *certain*; that is, it must be so expressed that no reasonable doubt can be entertained as to the meaning of the arbitrators, the effect of the award, or the rights and duties of the parties under it. For the very purpose of the submission, and the end for which the law favors arbitration, is the final settlement of all questions and disputes; and this is inconsistent with uncertainty.

In the next place, the award must be *possible*; for an award requiring that to be done which cannot be done is senseless and useless. But the impossibility which vitiates an award is one which belongs to the nature of the thing, and not to the accidental disability of the party at the time. Thus, if he be ordered to pay money on a day that is past, this is void; so if he be required to give up a deed which he neither has nor may expect to have; but if he be directed to pay money, the award is good, although he has no money, for it creates a valid debt against him. Nor can a party avoid an award on the ground of an impossibility created by himself, after the award, or indeed beforehand, if he created it for the purpose of evading an expected award.

This impossibility may be actual, or it may be that created by law; for an award which requires that a party should do what the law forbids him to do is void, either in the whole, or else for so much as is thus against the law, if that illegal part can be severed from the rest.

An award must be *reasonable;* if it be of things in themselves of no value or advantage to the parties, or out of all proportion to the justice and requirements of the case, or if it undertake to determine for the parties what they should determine for themselves, as that the parties should intermarry, it is void.

Lastly, the award must be *final* and *conclusive.* This necessity springs also from the very purpose for which the law favors arbitration, namely, the settlement and closing of disputes. It is not a valid objection to an award, that it is upon a condition, if the condition be clear and certain, consistent with the rest of the award, in itself reasonable, and such that there could be no doubt whether it were performed or not, or what were the rights or obligations dependent upon it.

An award may be open to any or all of these objections in part, without being necessarily void in the whole. So much of it as is thus faulty is void; but if this can be severed distinctly from the residue, leaving a substantial, definite, and unobjectionable award behind, this may be done, and the award then will take effect. It is therefore void in the whole because bad in part, only where this part cannot be severed from the residue; or where, if it be severed and amended, leaving the residue in force, one of the parties will be held to an obligation imposed upon him, but deprived of the advantage or recompense which it was intended that he should have. Generally, in the construction of awards, they are favored and enforced, wherever this can properly be done.

If the submission be in the most general terms, and the award equally so, covering "all demands and questions" between the parties, either party may still show that a particular demand either did not exist, or was not known to exist, when the submission was entered into, or that it was not brought before the notice of the arbitrators, or considered by them; and then the award will not be permitted to affect this demand.

If, by an award, money is to be paid in satisfaction of a debt, this implies an award of a release on the other side, and makes this release a condition to the payment.

There is no especial form of an award necessary in this country. If the submission requires that it should be sealed, it must be so. And if the submission was made under a statute, or under a rule of court, the requirements of the statute or the rule should be followed. But even here mere formal inaccuracies would seldom be permitted to vitiate the award.

If the submission contains other directions or conditions, as that it should be delivered to the parties in writing, or to each of the parties, such directions must be substantially followed. Thus, in the latter case, it has been held that it is not enough that a copy be delivered to one of the parties on each side, but each individual party must have one.

It may happen, where an award is offered in defence, or as the ground of an action, that it is open to no objection whatever for anything which it contains or which it omits; and yet it may be set aside for impropriety or irregularity in the conduct of the arbitrators, or in the proceedings before them. Awards are thus set aside if "procured by corruption or undue means." This rule rests, indeed, on the common principle, that fraud vitiates and avoids every transaction.

So, too, it may well be set aside if it be apparent on its face that the arbitrator has made a material mistake of fact or of law. It must, however, be rather a strong case in which the court would receive evidence of a mere mistake, either in fact, or in law, which did not appear in the award, and was not supposed to spring from or indicate corruption.

Another instance of irregularity is the omission to examine witnesses; or an examination of them when the parties were not present, and their absence was for good cause; or a concealment by either of the parties of material circumstances; for this would be fraud. So if the arbitrators, in case of disagreement, were authorized to choose an umpire, but drew lots which of them should choose him. But it has been held enough that each arbitrator named an umpire, and lots were drawn to decide which of these two should be taken, because it might be considered that both of these men were agreed upon. And if an umpire be appointed by lot, or otherwise irregularly, if the parties agree to the appointment, and confirm it expressly, or impliedly by attending before him, with a full knowledge of the manner of the appointment, this covers the irregularity.

SECTION II.

THE REVOCATION OF A SUBMISSION TO ARBITRATORS.

It is an ancient and well established rule, that either party may revoke his submission at any time before the award is made; and by this revocation render the submission wholly ineffectual, and of course take from the arbitrators all power of making a binding award. And, generally, this power exists until the award is made.

In this country, our courts have always excepted from this rule submissions made by order or rule of court; for a kind of jurisdiction is held to attach to the arbitrators, and the submission is quite irrevocable, except for such cases as make it necessarily inoperative.

There is a strong reason why a submission by order of court, or before a magistrate, should be preferred where it can be had, from the fact above stated, that the law permits any party who finds an award is going against him to revoke his submission or reference when he will, before the award is made; provided the award was only by agreement out of court, or not before a magistrate. In some of our States, the statutes authorizing and regulating arbitration provide for the revocation of the submission.

It should be stated, however, that, as an agreement to submit is a valid contract, the promise of each party being the consideration for the promise of the other, a revocation of the agreement or of the submission is a breach of the contract, and the other party has his damages. And damages would generally include all the expenses the plaintiff has incurred about the submission, and all that he has lost by the revocation, in any way.

If either party exercise this power of revocation, he must give notice in some way, directly or indirectly, to the other party; and until such notice, the revocation is inoperative.

Bankruptcy or insolvency of either or both parties does not necessarily operate as a revocation, unless the terms of the agreement to refer, or the provisions of the insolvent law, required it. But the assignees acquire whatever power of revocation the bankrupt or insolvent possessed, and, generally, at least, no further power.

The death of either party before the award is made vacates the submission, if made out of court, unless that provides in terms for the continuance and procedure of the arbitration, if such an event occur. But a submission under a rule of court is not revoked or annulled even by the death of a party. So the death or refusal or inability of an arbitrator to act would annul a submission out of court, unless provided for in the agreement; but not one under a rule of court, unless for especial reasons, satisfactory to the court, which would make an appointment of a substitute, if it saw fit to continue the reference.

It may be well to add, that, after an award is fully made, neither of the parties without the consent of the other, nor either nor all of the arbitrators without the consent of all the parties, have any further control over it.

If the submission provides for any method of delivering the award, this should be followed. If not, it is common for the referees to deliver the award to the prevailing party or his attorney, on payment by him of the fees of arbitration. Then the prevailing party looks to the losing party, for the whole, or a part, or none of the costs, as the award may determine.

The award should be sealed, and addressed to all the parties; and it should not be opened except in presence of all the parties, or of their attorneys, or with the consent of those absent indorsed on the award. If the submission is under a rule of court, it should be returned to court by the arbitrators, or the counsel receiving it, sealed, and opened only in court, or before the clerk, or with the written consent of parties.

The submission, or agreement to refer, may be made by exchange of Bonds, each party executing and delivering a Bond to the other party.

This would be a formal proceeding. But, as has been already said, no especial form is necessary; and often a very simple one, like that below, would suffice.

(86.)

Simple Agreement to Refer.

Know all Men, That we, of and of do hereby promise and agree, to and with each other, to submit, and do hereby submit, all questions and claims between us (*or any specific question or claim, describing it*) to the arbitrament and determination of (*here name the arbitrators*) whose decision and award shall be final, binding, and conclusive on us; (*add if there are more arbitrators than one, and it is intended that they may choose an umpire*) and, in case of disagreement between the said arbitrators, they may choose an umpire, whose award shall be final and conclusive; (*or add, if there be more than two arbitrators*) and, in case of disagreement, the decision and award of a majority of said arbitrators shall be final and conclusive.

In Witness Whereof, &c.

(*Signatures.*)

(87.)

Arbitration Bond. One or more Arbitrators.

Know all Men by these Presents, That I, (*one of the parties*) am held and firmly bound unto (*the other party*) in the sum of dollars, lawful money of the United States of America, to be paid to the said (*the other party*) executors, administrators, or assigns; for which payment, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the day of one thousand nine hundred and

The Condition of the above Obligation is such, That if the above bounden shall well and truly submit to the decision of (*the referee*) named, selected, and chosen *arbitrator* as well by and on the part and behalf of, the said as of the said between whom a controversy exists, to hear all the proofs and allegations of the parties of and concerning (*here set forth the claims or questions referred*) and all matters relating thereto, and that the award of the said arbitrator be made in writing, subscribed by him (or them) and attested by a subscribing witness, ready to be delivered to the said parties on or before the day of next

But before proceeding to take any testimony therein, the arbitrator shall be sworn, "faithfully and fairly to hear and examine the matters in controversy between the parties to these presents, and to make a just award according to the best of his (or their) understanding." And the said parties to these presents do hereby agree, that judgment in the case (in question) shall be rendered upon the award which may be made pursuant to this submission, to the end that all matters in controversy in that behalf, between them, shall be finally concluded. Then the above obligation to be void, otherwise to remain in full force and virtue.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

[To make the contract complete, the other party should execute and deliver a counterpart of this Bond.]

(88.)

Award of Arbitrators.

To all to whom these Presents shall come, We (*names of the arbitrators*), to whom was submitted as *arbitrators* the matters in controversy existing between as by the condition of their respective bonds of submission, executed by the said parties respectively, each unto the other, and bearing date the day of one thousand nine hundred and more fully appears.

Now, therefore, know ye, That we the *arbitrators* mentioned in the said bonds having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this award in writing, that is to say, the said (*here follows the award*)

In Witness Whereof, have hereunto subscribed these presents, this day of one thousand nine hundred and

(*Signatures.*)

In Presence of

CHAPTER XX.

THE CARRIAGE OF GOODS AND PASSENGERS.

SECTION I.

A PRIVATE CARRIER.

One who carries goods for another is either a private carrier or a common carrier.

A private carrier is one who carries for others once, or sometimes, but who does not pursue the business of carrying as his usual and professed occupation. The contract between him and the owner of the goods which he carries is one of service, and is governed by the ordinary rules of law. Each party is bound to perform his share of the contract. Such a carrier must receive, care for, carry, and deliver the goods, in such wise as he bargains to do.

If he carries the goods for hire, whether actually paid or due, he is bound to use ordinary diligence and care; by which the law means such care as a man of ordinary capacity would take of his own property under similar circumstances. If any loss or injury occur to the goods while in his charge, from the want of such care or diligence on his part, he is responsible. But if the loss be chargeable as much to the fault of the owner as of the carrier, he is not liable. The owner must show the want of care or diligence on the part of the private carrier, to make him liable; but slight evidence tending that way would suffice to throw upon him the burden of accounting satisfactorily for the loss. And if there is such negligence on the part of the carrier, or of a servant for whom he is responsible, the carrier is liable, although the loss be caused primarily by a defect in the thing carried.

If he carries the goods without any compensation, paid or promised, he is, in the language of the law, a gratuitous bailee, or mandatary: he is now bound only to slight care; which is such care as every person, not insane or fatuous, would take of his own property. For the want of this care, which would be gross negligence, he is responsible, but not for ordinary negligence.

We sum up what may be said of the private carrier in the remark, that the general rules which regulate contracts and mutual obligations apply to the duties and the rights of a *private carrier*, with little or no qualification. But it is otherwise with a *common carrier*.

SECTION II.

THE COMMON CARRIER.

THE law in relation to the rights, the duties, and the responsibilities of a common carrier is quite peculiar. The reasons for it are discernible, but it rests mainly upon established usage and custom. And, as these usages have changed considerably in modern times, this law has undergone important modifications.

He is a *common carrier* "who undertakes, for hire, to transport the goods of such as choose to employ him from some known and definite place or places to other known and definite place or places." He is one who undertakes the carriage of goods *as a business*; and it is mainly this which distinguishes him from the private carrier.

The rights and responsibilities of the common carrier may be briefly stated thus: He is bound to take the goods of all who offer, if he be a carrier of goods, and the persons of all who offer, if he be a carrier of passengers; and to take due care and make due transport and delivery of them. He has a lien on the goods which he carries, and on the baggage of passengers, for his compensation. He is liable for all loss or injury to the goods under his charge, although wholly free from negligence, unless the loss happens from the act of God, or from the public enemy. These three rules will be considered in the next section.

The important thing to be remembered is, that a *private carrier* is not liable for injury to persons, or loss of or injury to goods, without fault or negligence on his part; but a *common carrier* is liable, without any fault or negligence on his part.

Truckmen or draymen, porters, and others who undertake the carriage of goods for all applicants from one city or town to another, or from one part of a city to another, are chargeable as common carriers. So, proprietors of stage-coaches are chargeable as common carriers of passengers, and of the baggage of passengers; or the baggage of others, if they so advertise themselves. So are hackney-coachmen within their accustomed range.

If drivers of stages, or omnibuses, commonly carry and receive pay for goods or parcels which are not the baggage of passengers, and are held out or advertised, or generally known, as so carrying them, they are common carriers of goods, and the proprietors are liable for the loss of such parcels, although neither they nor the drivers were in fault. But if there is no such habit or usage, and the driver receives such a parcel to be carried somewhere, and is paid for it, the driver carries it as a private carrier, and not as a common carrier, and is chargeable only for negligence or fault. And if the line of carriages is established for passengers, and the driver does not account for what is paid him for occasional parcels, but takes it as his own perquisite, the proprietors are not answerable even for the driver's fault or negligence, unless circumstances in some way bring the fault home to them.

In this country, in recent times, the business of carrying goods and passengers is almost monopolized by what are called expressmen, by railroads, or by lines of steam-packets along our coasts, or upon our navigable streams or lakes. All these are undoubtedly common carriers; and although their peculiar method of carrying on this business is new, and will require from us especial consideration in another chapter, there can be no doubt of their being, to all intents and purposes, common carriers.

Ordinary sailing vessels are sometimes said to be common carriers. We should be disposed to restrict this term, however, to regular packets; or, at most, to call by this name general freighting ships. It is not, however, necessary to consider this question, as water-borne goods are now almost always carried under bills of lading, which determine the relations and respective rights of the parties; and these we shall consider in our chapter on the Law of Shipping.

The boatmen on our rivers and canals are common carriers, and ferrymen are common carriers of passengers by their office, and may become common carriers of goods by taking up that business. A steamboat usually employed as a carrier may do something else, as tow a vessel out of a harbor, or the like; and the character of common carrier does not attach to this special employment, and carry with it its severe liabilities. Therefore, for a loss occurring to a ship in her charge while so employed, the owner of the steamer is not liable without negligence on his part, or on the part of those whom he employs.

The same person may be a common carrier, and also hold other offices or relations. He may be a warehouseman, a wharfinger, or a forwarding merchant. The peculiar liabilities of the common carrier do not attach to either of these offices or employments. Thus, a warehouseman is liable for the loss of the goods which he takes for storage, only in case of his own negligence; he is not, as a common carrier is said to be, an insurer of the goods. The question then arises, when the liability of such a person is that of a warehouseman, and when it is that of a carrier.

If a carrier receives goods to be stored until he can carry them,—a canal-boatman, for example,—or if, at the end of the journey, he stores them for a time for the safety of the goods or the convenience of the owner, while thus stored he is liable only as warehouseman. But if he puts them into his store or office only for a short time, and for his own convenience, either at the beginning or end of the transit (or journey), they are in his hands as carrier.

Where these relations seem to unite and mingle in one person, it may be said to be the general rule, that, wherever the deposit, in whatever place or building, is secondary and subordinate to the carriage of the goods, which is, therefore, the chief thing, the party taking the goods is a carrier; and otherwise a depositary only of some kind. If, therefore, goods are delivered to a carrier, or at his depot or receiving-room, with directions not to carry them until further orders, he is only a depositary, and not a carrier, until those orders are received; but when they are received he becomes a carrier; and if the goods are afterwards lost or injured before their removal, he is liable as a common carrier without negligence or fault on his part.

SECTION III.

THE OBLIGATION OF THE COMMON CARRIER TO RECEIVE AND CARRY GOODS OR PASSENGERS.

He cannot refuse to receive and carry goods offered, without good cause; for, by his openly announcing himself in any way as engaged in this business, he makes an offer to the public which becomes a kind of contract as to any one who accepts it. He may demand his compensation, however, and, if it be refused, he may refuse to carry the goods; nor is he bound to carry them if security be offered to him, but not the money. But if the freight-money be not demanded, the owner of the goods, if he is able, ready, and willing to pay it, has all his rights although he does not make a formal tender of the money. A carrier may refuse if his means of carriage are already fully employed. But, in a case where a railway company, being common carriers, had issued excursion-tickets for a journey, it was held that they were not excused from carrying passengers according to their contract, upon the ground that there was no room for them in their conveyance; and that, in order to avail themselves of this answer, they should make their contract conditional upon there being room. If the common carrier cannot carry the goods without danger to them, or to himself or other goods, or without extraordinary inconvenience, or if they are not such goods as it is his regular business to carry, he is excused for not carrying them. He is always entitled to his *usual* charge, but not to extraordinary compensation, unless for extraordinary service.

The common carrier of goods is bound to receive them in a suitable way, and at suitable times and places. If he has an office or station, he must have proper persons there, and proper means of security. During the transit, and at all stopping-places, due care must be taken of all goods, and that means the kind and measure of care appropriate for goods of that description. If he have notice, by writing on the article or otherwise, of the need of peculiar care,—as, "Glass, with great care," or "This side uppermost," or "To be kept dry,"—he is bound to comply with such directions, supposing them not to impose unnecessary care or labor.

If he carry passengers he must receive all who offer, unless he has some special and sufficient reason for refusing.

In a case tried before the Supreme Judicial Court of Massachusetts, it was held that if an inn-keeper, who has frequently entered a railroad depot and annoyed passengers by soliciting them to go to his inn, receives notice from the superintendent of the depot that he must do so no more, and he nevertheless repeatedly enters the depot for the same purpose, and afterwards obtains a ticket for a passage in the cars, with an actual intention of entering the cars as a passenger, and goes into the depot on his way to the cars, and the superintendent, believing that he has entered the depot to solicit passengers, orders him to go out, and he does not exhibit his ticket, nor give notice of his real intention, but presses forward towards the cars, and the superintendent and his assistants therefore forcibly remove him from the depot, using no more force than is necessary for that purpose, such removal is justifiable, and not an indictable assault and battery.

A common carrier is bound to carry his passengers over the whole route, and at a proper speed, or supply proper means of transport; to demand only a reasonable or usual compensation; to notify his passengers of any peculiar dangers; to treat all alike, unless there be actual and sufficient reason for the distinction, as in the filthy appearance, dangerous condition, or misconduct of a passenger; and to behave to all with civility and decorum.

He must also have proper carriages, and keep them in good condition, and not overload them; and suitable horses and drivers; stop at the usual places, with proper intervals for rest or food; take the proper route; and drive at proper speed; and leave the passengers at the usual stopping-places, or wherever he agrees to. In none of these things can he depart from what is usual and proper at his own pleasure. And if by any breach of these duties a passenger is injured, the carrier is responsible. So if he puts his passengers in peril, and one of them be hurt by an effort to escape, as in jumping off, it is no defence for the carrier to show that he would have been safe if he had remained.

In one case it was held that a common carrier who had received a pickpocket as a passenger on board his vessel, and taken his fare, could not put him on shore so long as he was not guilty of any impropriety. But this may be doubted. The common carrier must certainly employ competent and well-behaved persons for all duties, and for failure in any of the particulars of his duties and obligations, he is responsible not only to the extent of any damage caused thereby, but also, in many cases, for pain and injury to the feelings. He is also bound to deliver to each passenger all his baggage at the end of his journey, and is held liable if he delivers it to a wrong party on a forged order, and without personal default.

Lastly, he must make due delivery of the goods at the proper time, in the proper way, and at the proper place, and to the proper person; and this person should be some one who was authorized by the owner or sender to receive the goods.

If a party authorized to receive the goods refuse, or is unable to do so, the carrier must keep them for the owner, and with due care; but now under the liability of a warehouseman, and not of a carrier; that is, he is now liable only for fault of some kind.

So the carrier must keep the goods for the owner, if he has good reason to believe that the consignee is dishonest, and will defraud the owner of his property. As to the time when goods should be delivered, it must be within the proper hours for business, when they can be suitably stored; or if the goods are delivered to the sender himself, or at his house, then at some suitable and convenient hour.

There must be no unnecessary delay, and the goods must be delivered as soon after a detention as may be with due diligence.

As to the way and the place at which the goods should be delivered, much must depend upon the nature of the goods, and much also upon the usage in regard to them, if such usage exists.

The goods should be so left, and with such notice, as to secure the early, convenient, and safe reception of them by the person entitled to have them. Something also must depend on this point, on the mode of conveyance. A man may carry a parcel into the house and deliver it to the owner or his servant; a wagon or cart can go to the gate, or into the yard, and there deliver what it carries. A vessel can go to one wharf or another, and is bound to go to that which is reasonably convenient to the consignee, or to one that was agreed upon; but a vessel is not always bound to comply with requirements of the consignee as to the very wharf the goods should be left at, but may leave the goods at any safe, convenient, and accessible wharf at which such goods are usually left.

Where the goods are not delivered to the owner personally, or to his agent, immediate notice should be given to the owner. The carrier is generally obliged to give notice of the delivery of goods, and if the owner has in any way designated how the goods may be delivered to himself, he is bound to obey this direction. The notice must be prompt and distinct. And if the goods are delivered at an unsuitable or unauthorized place, no notice will make this a good delivery.

Railroads terminate at their station, and although goods might be sent by wagons to the house or store of consignees, this is not usually done, as it is considered that the railroad carrier has finished his transit at his own terminus. Usually, the consignee of goods sent by railroad has notice from the consignor when to expect them; and this is so common, that it is seldom necessary, in fact, for the agents of the railroad to give notice to the consignee. But this should be given where it is necessary; and should be given as promptly, directly, and specifically as may be necessary for the purpose of the notice.

A railroad company may be compared to owners of ships in this respect, that neither can take the cars or the ships farther than the station or the wharf, and therefore may deliver the goods there. But a carrier by water is bound to give notice that the goods are on the wharf, and is not exonerated as carrier until he gives such notice; whereas, a railroad company is not bound to give notice.

It may happen that some third party may claim the goods under a title adverse to that of the consignor or consignee. If the carrier refuse to deliver them to this third party, and it turns out that the claimant had a legal right to demand them, the carrier would be liable in damages to him. But the carrier may and should demand full and clear evidence of the claimant's title; and if the evidence be not satisfactory, he may demand security and indemnity. If the evidence or the indemnity be withheld, he certainly should not be held answerable for anything beyond that amount which the goods themselves would satisfy, for he is in no fault. If he delivers the goods to such claimant, proof that the claimant had good title is an adequate defence against any suit by the consignor or consignee for non-delivery.

SECTION IV.

THE LIEN OF THE COMMON CARRIER.

THE legal meaning of this word, as we have said before, when we have had occasion to use the word in preceding chapters, is the right of holding or detaining property until some charge against it, or some claim upon the owner on account of it is satisfied.

The common carrier has this right against all the goods he carries, for his compensation. While he holds them for this purpose, he is not liable for loss or injury to them as a common carrier; that is, not unless the injury happen from his own fault.

He may not only hold the goods for his compensation, but may recover this out of them, by any of the usual means in which a lien upon personal chattels is made productive. That is, he holds them just as if they were pledged to him by the owner as a security for the debt. Therefore, if the debt be not paid in a reasonable time after it is due and demanded, the carrier may have a decree of a court of equity for their sale; or may sell them himself at auction, retaining his pay from the proceeds, and paying over the remainder. But to make this course justifiable and safe, the carrier must wait a reasonable time, and give full notice of his intention, so that the owner may have a convenient opportunity to redeem the goods; and there must be proper advertisement of the sale, and every usual precaution taken to insure a favorable sale; and the carrier must not himself buy the goods, and must act in all respects with entire honesty.

SECTION V.

THE LIABILITY OF THE COMMON CARRIER.

THIS is perfectly well established as a rule of law, although it is very exceptional and peculiar. It is sometimes said to arise from the public carrier being a kind of public officer. But the true reason is the confidence which is necessarily reposed in him, the power he has over the goods intrusted to him, the ease with which he may defraud the owner of them, and yet make it appear that he was not in fault, and the difficulty which the owner might have in making out proof of his default. This reason it is important to remember, because it helps us to construe and apply the rules of law on this subject. Thus, the rule is that the common carrier is liable for any loss or injury to goods under his charge, unless it be caused by the act of God, or by the public enemy. The rule is intended to hold the common carrier responsible wherever it was *possible* that he caused the loss, either by negligence or design.

Hence, the act of God means some act in which neither the carrier himself, nor any other man, had any direct and immediate agency. If, for example, a house in which the goods are at night is struck by lightning, or blown over by a tempest, or washed away by inundation, the carrier is not liable. This is an act of God, although man's agency interferes in causing the loss; for without that agency, the goods would not have been there. But no man could have directly caused the loss. On the other hand, if the building was set on fire by an incendiary at midnight, and the rapid spread of the flames made it absolutely impossible to rescue the goods, this might be an inevitable accident if the carrier were wholly innocent, but it would also be possible that the incendiary was in collusion with the carrier for the purpose of concealing his theft; and therefore the carrier would be liable for such a loss, however innocent.

As a general rule, the common carrier is always liable for loss by fire, unless it is caused by lightning, an accidental fire not being considered an act of God, or a peril of the sea; and this rule has been applied to steamboats and other vessels. So, it may be true that after the lightning, the tempest, or inundation, the carrier was negligent, and so lost the goods which might have been saved by proper efforts, or that he took the opportunity to steal them. If this could be shown, the carrier would, of course, be liable; but the law will not suppose this without proof, if the first and main cause were such that the carrier *could not* have been guilty in respect to it. So, a common carrier would be liable for a loss caused by a robbery, however sudden, unexpected, and irresistible, or by a theft, however wise and full his precautions, and however subtle and ingenious the theft, although either of these might seem to be unavoidable by any means of safety which it would be at all reasonable to require.

The general principles of agency extend to common carriers, and make them liable for the acts of their agents, done while in the discharge of the agency or employment. So, the knowledge of his agent is the knowledge of the carrier, if the agent be authorized expressly, or by the nature of his employment, to receive this notice or knowledge. But an agent for a common carrier may act for himself,—as a stage-coachman in carrying parcels, for which he is paid personally and does not account with his employer,—and then the employer, as we have said, is not liable, unless the owner of the goods believed the stage-coachman carried the goods for his employer, and was justified by the facts and apparent circumstances in so believing.

A carrier may be liable beyond his own route. It is very common for carriers, who share between them the parts of a long route, to unite in the business and the profits, and then all are liable for a loss on any part of the route.

If they are not so united in fact, but say they are so, or say what indicates that they are so, they justify a sender in supposing they are united, and then they are equally liable.

If a carrier takes goods to carry only as far as he goes, and then engages to send them forward by another carrier, he is liable as carrier to the end of his own route; he is liable also if he neglects to send the goods on; but he is not liable for what may happen to them afterwards.

SECTION VI.

THE CARRIER OF PASSENGERS.

THE carriers of passengers are under a more limited liability than the carriers of goods. This is now well settled. The reason is, that they have not the same control over passengers as over goods; cannot fasten them down, and use other means of securing them. But while the liability of the carrier of passengers is thus mitigated, it is still stringent and extreme.

No proof of care will excuse the carrier if he loses goods committed to him. But proof of *the utmost care* will excuse him for injury done to passengers; for the carrier of passengers is liable for injury to them, unless he can show that he took all possible care,—giving always a reasonable construction to this phrase; and in the case of railroad companies there is authority for using the words in almost their literal meaning; that is, for holding them liable for all injury to passengers which could have been *possibly* avoided.

SECTION VII.

A NOTICE BY THE CARRIER, RESPECTING HIS LIABILITY.

The common carrier has a right to make a special agreement with the senders of goods, which shall materially modify, or even wholly prevent, his liability for accidental loss or injury to the goods.

This question is, What constitutes such a bargain? A mere notice that the carrier is not responsible, or his refusal to be responsible, although brought home to the knowledge of the other party, does not necessarily constitute an agreement. The reason is this. The sender has a right to insist upon sending his goods, and the passenger has a right to insist upon going himself with customary baggage, leaving the carrier to his legal responsibility; and the carrier is bound to take them on these terms. If, therefore, the sender or the passenger, after receiving such notice, only sends or goes in silence, and without expressing any assent, especially if the notice be given at such time, or under such circumstances, as would make it inconvenient for the sender not to send, or for the passenger not to go, then the law will not presume from his sending or going an assent to the carrier's terms.

But the assent may be expressed by words, or made manifest by acts; and it is in each case a question of evidence for the jury whether there was such an agreement.

But a notice by the carrier, which only limits and defines his liability to a reasonable extent, without taking it away, as one which states what kind of goods he will carry, and what he will not; or to what amount only he will be liable for passengers' baggage, without special notice; or what information he will require, if certain articles, as jewels or gold, are carried; or what increased rates must be paid for such things,—any notice of this kind, if in itself reasonable and just, will bind the party receiving it.

No party will be affected by any notice,—neither the carrier, nor a sender of goods, nor a passenger,—unless a knowledge of it can be brought home to him. In a case in Pennsylvania, where the notice was in the English language, and the passenger was a German, who did not understand English, it was held that the carrier must prove that the passenger had actual knowledge of the limitation in the notice.

But the knowledge may be brought home to him by indirect evidence. As by showing that it was stated on a receipt given to him, or on a ticket sold him, or in a newspaper which he read, or even that it was a matter of usage, and generally known This question is one of fact, which the jury will determine upon all the evidence, under the direction of the court. And if the notice is ambiguous, they will be directed to give it the meaning which is against the carrier, because it was his business to make it plain and certain.

Any fraud towards the carrier, as a fraudulent disregard of a notice, or an effort to cast on him a responsibility he is not obliged to assume, or to make his liability seem to be greater than it really is, will extinguish the liability of the carrier so far as it is affected by such a fraud.

If a carrier gives notice which he is authorized to give, the party receiving it is bound by it, and the carrier is under no obligation to make a special inquiry or investigation to see that the notice is complied with, but may assume that this is done.

It should, however, be remarked that such notice affects the liability of the common carrier only so far as it is peculiar to him, that is, his liability for a loss which occurs without his agency or fault; for he is just as liable as he would be without any notice, for a loss or injury caused by his own negligence or default.

Perhaps a common carrier might make a valid bargain which would protect him against every thing but his own wilful or fraudulent misconduct. But no bargain could be made to protect him against this.

SECTION VIII.

THE CARRIER'S LIABILITY FOR GOODS CARRIED BY PASSENGERS.

A CARRIER of goods knows what goods, or rather what parcels and packages, he receives and is responsible for. A carrier of passengers is responsible for the goods they carry with them as baggage; what that is, the carrier does not always know; and he is responsible only to the extent of what might be fairly and naturally carried as baggage. This must always be a question of fact, to be settled as such by the jury, upon all the evidence, and under the direction of the court. But there can be no precise and definite standard. A traveller on a long journey needs more money and more baggage than on a short one; one going to some places and for some purposes needs more than one going to other places or for other purposes.

Thus in New York it was decided that *baggage* does not properly include money in a trunk, or any articles usually carried about the person. And in another New York case, it was held that, where the baggage of a passenger consists of an ordinary traveling trunk, in which there is a large sum of money, such money is not considered as included under the term *baggage*, so as to render the carrier responsible for it. But generally a passenger may carry as baggage, money, not exceeding an amount ordinarily carried for travelling-expenses. So in Massachusetts it was held that common carriers are responsible for money *bonâ fide* included in the baggage of a passenger, for travelling-expenses and personal use, to an amount not exceeding what a prudent person would deem proper and necessary for the purpose.

In Pennsylvania, carriers have been held responsible for ladies' trunks containing apparel and jewels. And in Illinois, a common carrier of passengers has been held liable for the loss of a pocket-pistol, and a pair of duelling-pistols, contained in the carpet-bag of a passenger, which was stolen out of the possession of the carrier. But in Tennessee, it has been held that "a silver watch, worth about thirty-five dollars, also medicines, handcuffs, locks, &c., worth about twenty dollars," were not included in the term baggage, and that the carrier was not responsible for their loss. In Ohio, it has been held that a gold watch, of the value of ninety-five dollars, was a part of the traveller's baggage, and his trunk a proper place to carry it in. In another New York case it has been held that the owners of steamboats were liable as common carriers for the baggage of passengers; but, to subject them to damages for loss thereof, it must be strictly baggage; that is, such articles of necessity and personal convenience as are usually carried by travelers. And it was accordingly held, in that case, that the carrier was not liable for the loss of a trunk containing valuable merchandise and nothing else, although it did not appear that the plaintiff had any other trunk with him. But in a case in Pennsylvania, where the plaintiff was a carpenter moving to the State of Ohio, and his trunk contained carpenters' tools to the value of fifty-five dollars, which the jury found to be the reasonable tools of a carpenter, it was held that he was entitled to recover for them as baggage.

There is some diversity, and perhaps some uncertainty, in the application of the rule; but the rule itself is well settled, and a reasonable construction and application of it must always be made; and, for this purpose, the passenger himself, and all the circumstances of the case, must be considered.

The purpose of the rule is to prevent the carrier from becoming liable by the fraud of the passenger, or by conduct which would have the effect of fraud; for this would be the case if a passenger should carry merchandise by way of baggage, and thus make the carrier of passengers a carrier of goods without knowing it and without being paid for it.

Generally, a common carrier of passengers, by stage, packet, steamer, or cars, carries the moderate and reasonable baggage of a passenger, without being paid specifically for it. But the law considers a payment for this so far included in the payment of the fare, as to form a sufficient ground for the carrier's liability to the extent above stated.

The carrier is only liable for the goods or baggage delivered to him and placed under his care. Hence, if a sender of goods send his own servant with them, and intrust them to him and not to the carrier, the carrier is not responsible. So, if a passenger keeps his baggage, or any part of it, on his person, or in his own hands, or within his own sight and immediate control, instead of delivering it to the carrier or his servants, the carrier is not liable, *as carrier,* for any loss or injury which may happen to it; that is, not without actual default in the matter. Thus, in an action brought in New York to charge a railroad company, as common carriers, for the loss of an overcoat belonging to a passenger, it appeared that the coat was not delivered to the defendants, but that the passenger, having placed it on the seat of the car in which he sat, forgot to take it with him when he left, and it was afterwards stolen; and it was held that the defendants were not liable. But if the baggage of a passenger is *delivered* to a common carrier, or his servant, he is liable for it in the same way, and to the same extent, as he is for goods which he carries.

In this country the rules of evidence permit the traveler to maintain his action against the carrier by proving, by his own testimony, the contents of a lost trunk or box, and their value. And the testimony of the wife of the owner is similarly admissible. But it is always limited to such things — in quantity, quality, kind, and value — as might reasonably be supposed to be carried in such a trunk or valise. The rule, with this limitation, seems reasonable and safe, and is quite generally adopted. In Massachusetts it was distinctly denied by the Supreme Court, but was afterwards established by statute.

The common carrier of goods or of passengers is liable to third parties for any injury done to them by the negligence or default of the carrier, or of his servants. And it would seem that he is liable even for the wilful wrong-doing of his servants if it was committed while in his employ, and in the management of the conveyance under his control, although the wrong was done in direct opposition to his express commands. So he is for injury to property by the wayside, caused by his fault. But the negligence of the party suffering the injury, if it was material and contributed to the injury, is a good defense for the carrier unless malice on the carrier's part can be shown.

Where the party injured is in fault, the common carrier has still been held liable, if that fault was made possible and injurious through the fault of the carrier. If passengers are carried gratuitously, that is, without pay, the common carrier is still liable for injury caused by his negligence.

Whether a railroad company is responsible for fire set to buildings or property along the road, without negligence on its part, has been much considered in this country. In some o our States they are made so liable by statute provision. And this fact, together with the general principles of liability for injury done, would seem to lead to the conclusion that they are not liable, unless in fault, or unless made so by statute.

(89.)

................Steam Packet Company.

MARKS AND NUMBERS.

Received from
the following articles, being marked and numbered as in the margin, in apparent good order, the contents and value unknown,

to be transported from to on one of the company's steamers, and to be delivered on their wharf in , in like good order and condition, the dangers of the sea, of fire on board or on wharf, collision, and all other accidents excepted.

DATED AT ,
19 *For the company.*

The following form will show the terms and conditions on which our express companies carry their freight. This paper, given and received, constitutes a contract.

(90.)

DUPLICATE.

................Express Company.

FAST FREIGHT LINE.

19

Received from
the following packages, in apparent good order, contents and value unknown:

..........Express Company.

Advanced Charges, $

RATES.

D'ble 1st Class	cts. per 100 lbs.
1st Class	cents per 100 lbs.
2d Class	cents per 100 lbs.
3d Class	cents per 100 lbs.
4th Class	cents per 100 lbs.

As per Classification on back.

Marked and numbered as in the margin, to be forwarded by railroad and delivered at upon payment of freight therefor as noted in the margin, subject to the conditions and rules on the back hereof, and those of the several railroads over which the property is transported, which constitute a part of this contract.

Agent.

On the back of this receipt is a minute and very full classification of all articles likely to be offered for transportation. followed by the

Conditions and Rules.

The destination, name of the consignee, and weight of all articles of freight, must be plainly and distinctly marked, or no responsibility will be taken for their miscarriage or loss; and when designed to be forwarded, after transportation on the route, a written order must be given, with the particular line of conveyance marked on the goods, if any such be preferred or desired.

The companies will not hold themselves liable for the safe carriage or custody of any articles of freight, unless receipted for by an authorized agent; and no agent of the line is authorized to receive, or agree to transport, any freight, which is not thus receipted for.

No responsibility will be admitted, under any circumstances, to a greater amount upon any single article of freight than $200, unless upon notice given of such amount, and a special agreement therefor. Specie, drafts, bank-bills, and other articles of great intrinsic or representative value, will only be taken upon a representation of their value, and by a special agreement assented to by the superintendent of the receiving road.

The companies will not hold themselves liable at all for injuries to any articles of freight during the course of transportation, arising from the weather, or accidental delays, or natural tendency to decay. Nor will their guaranty of special despatch cover cases of unavoidable or extraordinary casualties, or storms, or delays occasioned by low water and ice; and may be stored at the risk and expense of the owner. Nor will they hold themselves liable, as COMMON CARRIERS, for such articles, after their arrival at their place of destination at the company's warehouses or depots.

Carriages and sleighs, eggs, furniture, looking-glasses, glass and crockery ware, machinery, mineral acids, piano-fortes, stoves and castings, sweet potatoes, wrought marble, all liquids put up in glass or earthen ware, fruit, and live animals, will only be taken at the owner's risk of fracture or injury during the course of transportation, loading and unloading, unless specially agreed to the contrary.

Gunpowder, friction matches, and like combustibles, will not be received on any terms; and all persons procuring the reception of such freight by fraud or concealment, will be held responsible for any damage which may arise from it while in the custody of the company.

It is further stipulated and agreed, that goods shipped to points west of shall be subject to a change in classification and corresponding change of rates beyond those points.

Cases or packages of boots and shoes, and of other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the companies will not be liable for diminution of the original contents, and the companies will hold the freighter, in all cases, to bear the loss arising from improper packing.

It is also agreed between the parties that the said companies, and the railroads and steamboats with which they connect, shall not be held accountable for any deficiency in packages if receipted for to them in good order.

All articles of freight arriving at their places of destination must be taken away within twenty-four hours after being unladen from the cars,—each company reserving the right of charging storage on the same, or placing the same in store at the risk and expense of the owner, if they see fit, after lapse of that time.

CHAPTER XXI.

HOTEL KEEPERS, INNKEEPERS, AND BOARDING-HOUSE KEEPERS.

HOTEL KEEPERS and innkeepers are, in law, the same. An inn has been judicially defined as a house where the traveller is provided with everything which he has occasion for while on his way. There need not be a sign to make it an inn. A coffee-house or eating-room is not an inn, nor is a boarding-house.

An innkeeper has a lien upon all the goods of a guest, for the price of his entertainment, or that of his servants and horses. This lien covers the goods brought to him by a guest, though they belong to another person. Thus he has a lien on a stolen horse which the thief brings to him. But he has no lien on the clothes or goods which a guest actually has upon his person.

He must receive every guest who offers, unless his house is full, or there is good reason to believe that the guest will be disorderly. A guest has a right to reasonable accommodations, but not to choose his apartment, or use it for other purposes than those for which it was designated. Public policy imposes upon an innkeeper a severe liability. In strict law, he is an insurer of the property committed to his care, against everything but the act of God, the public enemy, or the fraud or neglect of the guest. But there seems to be of late some disposition in the courts to hold him thus liable only where there has been some kind or measure of negligence on his part.

A boarder at a boarding-house neither holds the keeper of the house to this liability, nor has the keeper a lien on the boarder's goods. It is sometimes difficult to say whether a person in the house is a guest at an inn, or a boarder. From all the cases we infer this distinction: A boarder is one who makes a bargain for a certain time. A guest comes and goes when he likes, paying only for what he receives. Though he stays a long time at an inn or hotel, without any bargain on time, he is still a guest; holding the keeper of the inn to his liability, and having his goods under a lien to the keeper. But if he makes a bargain on time, he becomes a boarder, and the liability and lien of the keeper cease.

It is a good defence by an innkeeper against his liability for a loss, that it was caused by a servant of the owner, or by one who came with him as his companion, or by the owner's own fault. It is also a good defence if the owner retained, personally and exclusively, the custody and care of the goods; but it is not enough to make this defence sufficient, that the owner exercised some choice as to where his goods should be placed, nor that the key of the room was given him. But an innkeeper may require of his guest to place his goods in a particular place, under lock and key; or to give notice to guests that he will not be responsible for money, or especially valuable goods, unless placed in the innkeeper's safe. If such precautions are reasonable, and the guest neglects them, the innkeeper is not liable. Some articles of this kind a guest needs to have within his immediate reach; and such things he need not deposit in the safe, and the innkeeper would be liable if they were lost without the guest's own fault.

The innkeeper is liable for the loss of the goods while fairly in his custody, though not specially delivered to him: as if lost while the innkeeper's servant was carrying them to an inn, or from the inn to the cars, or in a hack in which the innkeeper undertook to carry the guest "free" from a station to his inn.

Some cases hold that the innkeeper is liable for the loss of goods placed in an inn although the owner does not himself lodge or eat there. But other cases, and we think with better reason, hold that the innkeeper is liable only for the goods when the owner comes and stays with them. He is not liable permanently for goods left by a guest who has gone away. He would, however, still be held liable for them for a reasonable time, which, in one case, was said to extend over "some days." For a guest may leave for a reasonable time,—which must not be long,—with the purpose of return; and while he is absent his goods are under the same responsibility of the innkeeper as if the owner were in the house.

If a horse or carriage is put into a distant barn, or a horse into a pasture, by the innkeeper, without the knowledge or consent of the owner, the innkeeper is liable for their loss.

We hold that a boarding-house keeper is liable for loss caused by the negligence of his or her servants, as he or she is for his or her own; but not, like an innkeeper, for a loss without negligence.

CHAPTER XXII.

LIMITATIONS.

SECTION I.

THE STATUTES OF LIMITATIONS.

All of our States have what are called Statutes of Limitations. They are not the same everywhere; but they provide different periods of time within which the actions specified in the Statutes must be brought. These periods vary from twenty years to one. Generally, they are longer for real actions, or for actions on judgments or on contracts under seal, and shorter for simple contracts of various kinds. An abstract of these statutory provisions in all the States is given at the close of this chapter.

All actions of account, and all which can be brought for indebtedness or damages, and all actions of debt grounded upon any lending, or contract without seal, and all actions for arrearages of rent, must be commenced and sued within the period of limitation fixed for bringing such actions by the statute law of the State in which the action is to be brought.

In some States, a statute provides, in substance, that, if a debt or promise be once barred by the Statute of Limitations, no acknowledgment of the debt or new promise shall renew the debt, and take away the effect of the statute, unless the new promise is in writing, and is signed by the party who makes the promise. But this statute expressly permits a part-payment either of principal or interest of the old debt to have the same effect as a new promise. And this statute also provides, that if there be joint contractors or debtors, and a plaintiff is barred by the statute against both, but the bar of the statute is removed as to one by a new promise or otherwise, the plaintiff may have judgment against this one, but not against the other.

Such statutes have been passed in Maine, Massachusetts, Vermont, New York, Indiana, Michigan, Arkansas, and California, and in most of the other States.

SECTION II.

CONSTRUCTION OF THE STATUTE.

For the law of limitation there is a twofold foundation: in the first place, the actual probability that a debt which has not been claimed for a long time was paid, and that this is the reason of the silence of the creditor. But, besides this reason, there is the inexpediency and injustice of permitting a stale and neglected claim or debt, even if it has not been paid, to be set up and enforced after a long silence and acquiescence.

Before inquiring into the rules of law which now apply to the case of an acknowledgement or new promise, it should be remarked that a prescription, or limitation, of common law, much more ancient than the statutes above quoted, is still in force. This is the presumption of payment after twenty years, which is applicable to all debts; not only the simple contracts to which the Statutes of Limitation refer, that is, contracts which are merely oral, or which if written have no seal, but to specialties, or contracts or debts under seal or by judgment of court. Of these it will not be necessary to speak here, excepting to remark, that in a few of our States the Statute of Limitation excepts a promissory note which is signed in the presence of an attesting witness, and is put in suit by the original payee, or his executor or administrator; such a note in those States, as in Maine and Massachusetts, may be sued any time within twenty years after it is due. Bank-bills and other evidences of debt issued by banks, are everywhere excepted from the operation of the statute.

SECTION III.

THE NEW PROMISE.

What is the new promise which suffices to take a case out of the statute? A mere acknowledgment, which does not contain, by any reasonable implication or construction, a new promise, is not sufficient, and still less so if it expressly excludes a new promise. In the leading American case upon this point, before the Supreme Court of the United States, it was proved, in answer to the plea of the Statute of Limitations, that the defendant, one of the partners of a firm then dissolved, said to the plaintiff, "I know we are owing you;" "I am getting old, and I wish to have the business settled:" it was held that these expressions were insufficient to revive the debt. So, in New Hampshire, in an action on a promissory note, the defendant, on being asked to pay the note, said "he guessed the note was outlawed, but that would make no difference, he was willing to pay his honest debts, always." As he did not state in direct terms that he was willing to pay the note, this was held not sufficient to revive the debt. A new promise is not now implied by the law itself, from a mere acknowledgment.

The new promise need not define the amount of the debt. That can be done by other evidence, if only the existence of the debt and the purpose of paying it are acknowledged. Still, the new promise must be of the specific debt, or must distinctly include it; for if wholly general and undefined, it is not enough. A testator who provides for the payment of his debts, generally, does not thereby make a new promise as to any one of them.

If the new promise is conditional, the party relying upon it must be prepared to show that the condition has been fulfilled. Thus, if the new promise be to pay "when I am able," the promisee must prove not only the promise, but that the promisor is able to pay the debt.

As the acknowledgment should be voluntary, it follows that one made under process of law, as by a bankrupt, or by answers to interrogatories which could not be avoided, should never have the effect of a new promise.

SECTION IV.

PART-PAYMENT.

A PART-PAYMENT of a debt is such a recognition of it as implies a new promise, even if it was made in goods or chattels, if they were offered as payment, and agreed to be received as payment, or by negotiable promissory note or bill. Thus, in a case where one was sued for money due for a quantity of hay, and pleaded that it was barred by limitation, which was a good defence, the plaintiff proved in reply that defendant had given him within the limitation a gallon of gin as part-payment for his debt, and it was held that this took the case out of the Statute of Limitations, and the plaintiff recovered. But a payment has this effect only when the payment is made as of a part of a debt. If it is made in settlement of the whole, of course it is no promise of more. And a bare payment, without words or acts to indicate its character, would not be construed as carrying with it an acknowledgment that more was due and would be paid.

If a debtor owes several debts, and pays a sum of money, he has the right of appropriating that money to one debt or another as he pleases. If he pays it without indicating his own appropriation, the general rule is, that the creditor who receives the money may appropriate it as he will. There is, however, this exception. If there be two or more debts, some of which are barred by the statute, and others are not barred by it, the creditor cannot appropriate the payment to a debt that is barred, for the purpose of taking it out of the statute by such part-payment.

SECTION V.

THE STATUTORY EXCEPTIONS.

As persons may have a right of action without being able to begin the action within the period required by the statutes, because they are disabled by infancy, or by absence from the State, or by unsoundness of mind, or imprisonment, or in some States by being a married woman, it is generally provided in the statutes that the limitations there prescribed do not apply to persons so disabled. The more common of these disabilities and the most universal in our State laws, are infancy and absence from the State. But these disabilities must exist when the cause of action arises to prevent the statutes of limitation from applying. And after the disabilities are removed, the persons who have been disabled may bring their action within certain periods of time. These periods are stated in the abstract of the Statutes of Limitation at the close of this chapter.

The effect of these is, that the disability must exist when the debt accrued ; and then, so long as the disability continues to exist, the statute does not take effect. But it is a general rule, that, if the limitation begins to run, it goes on without any interruption or suspension from any subsequent disability. Thus, if a creditor be of sound mind, or a debtor be at home when the debt accrues, and one month afterwards the creditor becomes insane, or the debtor leaves the country, nevertheless the six years go on, and after the end of that time no action can be commenced for the debt. Or if the disability exists when the debt accrues, and some months afterwards ceases, so that the limitation begins to run when it ceases, and afterwards the disability comes again, it does not interrupt the limitation.

If, when a debt is due, the debtor is out of the State, the limitation does not begin to run. If afterwards he returns to the State, it then begins to run, and, having begun, it continues to run, in most of the States, although he goes out of the State again, and returns no more.

In this country, a rational construction has been given to the disability of being out of the State, and its removal; and it is not understood to be terminated merely by a return of the debtor for a few days, if during those days he was not within reach. If, however, the creditor knew that he had returned, or might have known it by the exercise of reasonable care and diligence, soon enough to have profited by it, this removal of the disability brings the statute into operation, although the return was for a short time only.

SECTION VI.

WHEN THE PERIOD OF LIMITATION BEGINS.

It is sometimes a question from what point of time the limitation must be counted. And the general rule is, that it begins when the action might have been commenced. If a credit is given, this period does not begin until the credit has expired. If a note on time be given, the limitation does not begin until the time has expired, including the additional three days' grace; if a bill of exchange be given, payable at sight, then the limitation begins after presentment and demand; but if a note be payable on demand, or money is payable on demand, then the limitation begins at once, because there may be an action at once. If there can be no action until a previous demand, the limitation begins as soon as the demand is made. If money be payable on the happening of any event, then the limitation begins after that event has happened. If several successive credits are given, as if a note is given which is to be renewed; or if a credit is given, and then a note is to be given; or if the credit is longer or shorter, at the purchaser's option, as if it be agreed that a note shall be given at two or four months, then the limitation begins when the whole credit or the longer credit has expired.

SECTION VII.

THE STATUTE DOES NOT AFFECT COLLATERAL SECURITY.

It is important to remember that the Statute of Limitations does not avoid or cancel the debt, but only provides that "no action shall be maintained upon it" after a given time. Therefore, it does not follow that no right can be sustained by the debt, although the debt cannot be sued. Thus, if one who holds a common note of hand on which there is a mortgage or pledge of real or of personal property, without valid excuse neglects to sue the note until after the limitation, he can never bring an action upon that note; but the pledge or mortgage is as valid and effectual as it was before; and, as far as it goes, his debt is secure; and for the purpose of realizing this security, by foreclosing a mortgage, for example, he may have whatever process is necessary, although he cannot sue the note itself. And the debtor cannot redeem the property pledged or mortgaged except by payment of the debt.

ABSTRACT OF THE STATUTES OF LIMITATIONS.

ALABAMA.—Judgments of courts of records, *twenty years*. Actions to recover real property, contracts or writings under seal, actions against sheriffs, coroners, constables, and other public officers, for malfeasance in office, *ten years*. Trespass to the person or real or personal property, detention or conversion of personal property, all promises and writings not under seal, actions for recovery of loan or on an account stated, actions for the use and occupation of land, actions against sureties of public officers, and sureties of executors, administrators, and guardians, and judgments of justices of the peace, and actions on simple contract or specialty not specifically enumerated, *six years*. Certain actions on equities of redemption in lands sold by decree of court, *five years*. Actions against surety to writ of error, appeal bond, etc., or except on those given in courts of the State, *four years*. Actions on open or unliquidated account to be computed from date of last item, or time when account was due, *three years*. Actions by personal representative for death of testator or intestate, *two years*. Malicious prosecutions, criminal conversation, seduction, breach of promise, and libel and slander, actions for statutory penalties, actions for damages for personal injury or death of a minor under statute, all other actions for injury to person or rights not arising from contract, *one year*. Persons under disability have three years after the removal of the same in which to sue or defend, but action must be brought within *twenty years*. Period of defendant's absence from the State is not included. Part payment or unconditional promise in writing only will revive cause of action.

ARIZONA. — Actions to recover real estate held under recorded title, on judgments and on debt founded on contract in writing executed within the Territory, *five years*. Where real estate is held under color of title, action in three years; held under recorded title, cultivated, used and enjoyed, action in *ten years*. Actions on bond to convey real estate, partnership accounts, and accounts between merchant and merchant, judgments rendered without the Territory, or upon an instrument in writing executed outside the Territory, actions for debt founded upon a contract in writing, actions upon the bond of an administrator, etc., actions for the specific performance of contracts for the conveyance of real estate, and all other actions where no provision made, *four years*. Actions on contracts not in writing and on stated or open accounts, *three years*. Trespass, trover, and conversion, and claim and delivery of personal property *two years*. Actions for injury to the person, malicious prosecution, false imprisonment, libel, slander, seduction, breach of promise, injury to the person, resulting in death, *one year*. Limitation is suspended during absence from the Territory. New acknowledgment or promise must be in writing.

ARKANSAS. — Actions to recover real property, *seven years*. But persons under legal disabilities may bring their action within *three years* after the removal of such disability. Judgments, *ten years*. Actions on bonds of executors and administrators, *eight years;* on official bonds of sheriffs, coroners, and constables, *four years*. Promissory notes and other instruments in writing, including those under seal, *five years*. Contracts not in writing, trespass on lands, libels and actions for taking or injuring goods and chattels, *three years*. Actions against sheriffs and coroners except for escape, *two years*. Actions for criminal conversation, assault and battery, false imprisonment, slander, actions against sheriffs for escape, *one year;* all other causes of action, *five years*. Suits on mortgages must be brought before the debt secured thereby is barred. In all cases except actions to recover real property, the limitation in regard to persons under disabilities begins to run from the removal of the same. In actions on an account current, the cause of action accrues from the last item proved in the account. Any new promise must be in writing, and signed by the party to be charged. Actions which survive may be brought by and against executors and administrators within *one year* from the death of the party, or the granting letters testamentary or of administration. Any action failing for any cause not affecting the right of action may be recommenced within *one year* after such failure.

CALIFORNIA. — Actions to recover real property or *mesne* profits of same, *five years*. Judgments of courts of record, *five years*. On contracts, obligations, or liabilities founded on an instrument in writing executed in the State, *four years*. Actions on statute liabilities, other than penalties and forfeitures, trespass on real estate, trover, detinue, and replevin, actions in case of fraud, the time beginning to run from discovery of the same, *three years*. Contracts not in writing or on written instruments executed out of the State, and actions against sheriffs, coroners, and constables, for acts done in official capacity, except for escapes, *two years*. Actions for statute penalties or forfeitures or for an undertaking in a criminal action, libel, slander, assault, battery, false imprisonment, seduction, actions against sheriffs and constables for escapes, action against a municipal corporation for damages caused by a mob or riot, actions for personal injury due to the wrongful act or negligence of another, and actions against banks for payment of a forged or raised check, *one year*. Action for property seized by tax collector, *six months*. All other actions must be commenced within *four years*. There is no limitation to actions against a bank or trust company for the recovery of deposits. In actions on mutual, open, and current accounts, the cause of action is deemed to have accrued from the last item proved on either side. The time of limitation is not to run against persons out of the State. The limitation in case of persons under disabilities at the time of accrual of right begins to run from the removal of the same. New promise to revive action must be in writing.

COLORADO.—Actions for recovery of real property, *twenty years*. In case of actual possession under connected chain of title, *seven years*. Persons under disability are allowed two years after removal of disability. Persons in possession under color of title for seven years and payment of taxes, or in case of unoccupied land after seven consecutive years' payment of taxes, are deemed owners to extent of paper title. Actions on contracts, express or implied, judgments of courts not of record, rent, waste and trespass on land, taking, detaining, or injuring personal property and assumpsit, *six years*. Actions concerning water rights, *four years*. Actions for injury or death of employe, *two years*. Assault and battery, false imprisonment, slander, libel, actions against sheriffs or coroners, except for escapes, *one year*. Escapes, *six months*. All other personal actions, *three years*. Limitations in case of persons under disabilities begin to run from date of removal of same. When the cause of action accrued out of the State on a contract, judgment, or sealed instrument, action must be brought within *six years* of the time it accrued. If cause of action accrued out of the State more than six years before, and was there put in judgment more than *three months* before action brought here, statute may be pleaded in bar if defendant is a *bona fide* resident, and may be pleaded upon any judgment or decree rendered in any Court out of the State against a *bona fide* resident of the State upon any debt, contract, or liability barred in this State by Statute of Limitations.

CONNECTICUT. — Actions to recover real property, *fifteen years*. But persons under legal disabilities may bring such action within *five years* after removal of the disability. Suits on contracts under seal and promissory notes not negotiable, *seventeen years;* and persons under disabilities, within *four years* after removal of the same. Actions on all simple contracts, book debts, debt on simple contract, contracts in writing not under seal, except notes not negotiable, *six years*. Persons under disabilities, *three years* after removal of the same. In cases of settlement of partnership, or joint occupancy of real or personal estate or joint accounts, courts will take into consideration all the joint transactions since the time of the last settlement, though more than *six years* have elapsed since said settlement. Except the cases mentioned above, an action founded on any express contract or agreement not reduced to writing, actions of trespass, or slander, must be brought within *three years*. Actions for damages for loss of life from negligence, *one year* from the date of the negligence complained of. Actions for damage to person or property caused by negligence of municipality, railway, or street railway company may be brought within *one year;* provided that no such action may be brought against a tramway or railroad company unless proper notice of the injury is given within four months of date of injury. Any action properly begun, and failing for a cause not affecting the right of action, may be recommenced within *one year* after such failure, except actions against executors and administrators, which may be begun again within six months. When cause of action is fraudulently concealed, the limitation shall begin to run from discovery of the right of action by the person entitled.

DELAWARE. — Real actions, actions on sealed instruments and judgments, *twenty years;* but persons under disabilities may bring a real action within *ten years* from removal of the same. On official bonds of sheriffs, executors, and administrators, and actions on promissory notes, bills, and acknowledgments in writing, *six years.* On guardian's bonds, *three years* from determination of guardianship. Trespass, replevin, detinue, debt others than specialty, account, assumpsit, and case, *three years.* Personal injury, *one year.* Time of defendant's absence from the State is not included. In mutual and running accounts, the limitation does not begin to run while the account is open. Persons under disabilities may begin personal actions within *three years* after removal of disability.

DISTRICT OF COLUMBIA. — Actions on bill, bond, judgment, or other specialty, *twelve years.* Actions upon simple contracts, including bills of exchange and notes not under seal, book debt or account, debt, detinue and replevin and trespass to real estate, *three years.* Slander, trespass, assault and battery, wounding, and imprisonment, *one year.* Persons under disability have the same time after removal of the same.

FLORIDA. — Real actions against person claiming under color of title, *seven years;* in other cases, *twenty years.* Domestic judgments, and writings under seal, *twenty years.* Foreign judgments, *seven years.* Writings not under seal, *five years.* Statute liabilities other than penalties and forfeitures, trespass on real property, trover, detinue, and replevin, and contracts not in writing, except an open account for goods, wares, and merchandise, action for relief on ground of fraud, *three years.* Statute penalties and forfeitures, libel, slander, assault, battery, false imprisonment, and actions on open accounts, *two years.* Action for articles charged in a store account and those for causes other than those above-mentioned, *four years.* In actions to recover a balance due on mutual, open, and current accounts, the cause of action is deemed to have accrued from the date of the last item proved on either side. New promise must be in writing.

GEORGIA. —Actions to recover real property, *twenty years;* but if defendant claim under written evidence of title, *seven years;* foreign judgments, *five years;* domestic judgments, *seven years.* Sealed instruments, and actions to enforce rights accruing under statutes, acts of incorporation or by operation of law, *twenty years.* Contracts in writing, including bills and notes, *six years.* Open accounts and contracts not in writing, trespass on realty, or personalty, *four years.* Injuries to person, except libel and slander, *two years.* Libel and slander, *one year.* Limitations in case of persons under disabilities begin to run from the removal of the same. Any new promise must be in writing.

IDAHO. — Judgments and actions for *mesne* profits of real estate, *six years.* Contracts and obligations in writing, *five years;* those not in writing, *four years.* Statute liabilities other than penalties and forfeitures, trespass on real estate, taking, detaining, or injuring goods and chattels, and actions for relief on the ground of fraud or mistake, *three years.* Actions against officers for seizing, detaining, or injuring property, actions for penalty or forfeiture, on a statute or undertaking in a criminal case, to recover damages for death, for libel, slander, assault and battery, false imprisonment, seduction, or escape, *two years.* A cause of action barred in the State or Territory where it arose is barred here.

ILLINOIS. — Actions to recover real property, and judgments of a domestic court of record *twenty years;* but seven years residence with connected record title, or seven years actual possession under claim and color of title and payment of all taxes legally assessed, or in the case of unoccupied land, *seven years,* payment of taxes made in good faith under claim and color of title, constitutes ownership to the extent of the paper title. Bonds, promissory notes, bills, written leases, written contracts, and other indebtedness in writing, judgments of a domestic court not record, and suits for foreclosure of mortgages, *ten years.* Unwritten contracts, judgments of a foreign court of record, awards of arbitration, damages to real or personal property, detinue, and trover, and all civil actions not otherwise provided for, *five years.* Injuries to person, false imprisonment, malicious prosecution, statutory penalties, abduction, and seduction, *two years.* Slander and libel, *one year.* Actions against the representatives of deceased persons, *one year* from issuing letters testamentary or of administration. Persons under disabilities may bring real or personal actions within *two years* from the removal of the same. If any person, liable to an action, conceals the same, the statute begins to run from date of the discovery. Any action defeated for any cause not affecting the right of action may be begun again within *one year* from such defeat. New promise must be in writing. The time of debtor's absence from the State is not included in the period of limitation.

INDIANA. — Real actions, judgments of a court of record and contracts in writing, other than those for the payment of money, *twenty years.* Promissory notes, bills of exchange, and other written contracts for the payment of money, *ten years.* Accounts and contracts not in writing, use, rents, and profits, of real estate, injuries to property, trover, replevin, actions for relief against fraud, and for money collected by a public officer, *six years.* Injuries to person or character, statutory penalties, and indentures of apprenticeship, *two years.* Actions for the recovery of real property sold on execution, brought by the debtor or any person claiming under him, by title acquired after judgment, *ten years* from sale; for real property sold by executors, etc., on a judgment, by a party to the judgment or persons claiming under him, subsequent to the judgment, *five years* after confirmation of sale. Actions not specially limited by statute, *fifteen years.* Time of debtor's absence from the State not included. In mutual, open, and current accounts, the cause of action is deemed to have accrued from date of last item proved. Persons under disabilities at the time of accrual of right may bring their action within *two years* after removal. An action failing for a cause not affecting the right other than plaintiff's negligence, may be recommended within *five years.* New promise must be in writing.

IOWA. — Judgments of court of record, *twenty years.* Real actions, judgments other than of courts of record and written contracts, *ten years.* Contracts not in writing, and injuries to property, fraud, and all other actions not otherwise provided for, *five years.* Actions against sheriffs and public officers, *three years;* injuries to person or reputation, and statute penalties, *two years.* In open accounts, the cause of action accrues from the date of the last item proved. In all cases where by the death of a party an action against his estate is delayed beyond the limitation, such limitation shall be extended six months from such death. In the case of larceny by an administrator, executor, or guardian, statute does not begin to run until the settlement of the estate or the attainment of majority by the ward, as the case may be. Persons under disabilities may begin action within *one year* from the removal of the same. New promise or acknowledgment must be in writing. Period of debtor's non-residence in the State not included but actions barred where debtor has previously resided, are barred here.

KANSAS. — Actions for recovery of land sold on execution, or by administrators, etc., by order of the court, or for taxes, *five years* from the recording of the deed, other real actions, *fifteen years;* but persons under disabilities may bring action within *two years* after removal. Contracts and agreements in writing, and actions on bonds of executors, etc., *five years.* Contracts not in writing, and statutory liabilities, other than penalties or forfeitures, *three years.* Trespass on real property, actions for taking, detaining, or injuring personal property, relief from fraud and injuries to rights arising on contract and not herein enumerated, *two years.* Libel, slander, assault and battery, malicious prosecution, false imprisonment, penalties, and forfeitures, *one year.* Time of debtor's absence from the State not included, and causes of action arising in another State, and barred there, are barred here also. Persons under disabilities may begin personal action within *one year* after removal thereof. After failure of an action for any cause not affecting the right of action, new action may be begun within *one year.* Acknowledgment of a debt barred must be in writing.

KENTUCKY. — Real actions, *fifteen years;* but *seven years'* occupation under connected record title is a bar. Persons under disabilities at the time of the accrual of such right may bring an action within *three years* after the removal of the same, provided the whole time is not extended beyond *thirty years.* Actions on judgments, bonds, and written contracts, *fifteen years.* Contracts not in writing, statute liabilities, penalties and forfeitures, trespass on real and personal property, trover, detinue, replevin, bills, notes, and checks, and accounts between merchant and merchant, relief from fraud, and any action for injury to plaintiff's rights not arising on contract and not specially enumerated, *five years.* Merchants' accounts for goods sold, or charged in store account, *two years* from first day of January, after delivery. Injuries to person, criminal conversation, breach of promise, seduction, malicious prosecution, conspiracy, libel and slander, *one year.* In case of persons under disabilities, limitation begins to run from the removal of the same. Executors and administrators may bring actions which survive *one year* after death of party entitled.

LOUISIANA. — Prescription against immovables, *ten years* under title, and in good faith, *thirty years* without reference to title or good faith. Against movables, *three years* in good faith and under title. Actions on judgments for money and stated accounts, and all personal actions not specially provided for, *ten years.* Bills and notes, *five years.* Arrearages of rent, money lent, accounts of merchants, annuities, alimony, salaries of clerks, physicians, apothecaries, surgeons, sheriffs, and attorney's accounts, *three years.* Libel and slander, and actions by workmen, etc., for wages, and by innkeepers for lodging and board, freight of vessels and wages of crew, *one year.* Prescription does not run against minors and persons under interdiction unless specified by law.

MAINE. —Judgments of courts of record, *twenty years.* Real actions, *twenty years;* persons under disabilities, *twenty years* from removal of same, provided the whole time is not extended beyond *forty years.* Witnessed promissory notes and bank bills, *twenty years.* Debt on contract, and liabilities not under seal, judgments not of record, arrears of rent, assumpsit, and all actions on the case, waste, trespass, replevin, trover, and detinue, *six years.* Assault and battery, false imprisonment, libel and slander, *two years;* escape, *scire facias* against bail and trustees, *one year;* all other personal actions, *twenty years*. On mutual and current accounts action accrues from the last item proved. Limitation in case of persons under disabilities begins to run from removal of the same. After failure of action for any cause not affecting the right, a new action may be begun within *six months*. An acknowledgment must be express and in writing to revive a debt. Time of debtor's absence from the State is not included in period of limitation.

MARYLAND. — *Twenty years* gives title to land. Actions on judgments, recognizances, specialties, bonds of executors and administrators, and other officers, *twelve years*. Actions of account, assumpsit, or on the case, debt on simple contract, for rent in arrear, detinue, and replevin, trespass for injuries to real or personal property, illegal arrest or false imprisonment, *three years*. Slander and trespass to person, *one year*. In case of persons under disabilities, limitation begins to run from the removal of the same.

MASSACHUSETTS. — Real actions, *twenty years*. Witnessed promissory notes by original payee, and bills and notes of a bank, *twenty years*. Contracts not under seal, actions for arrears of rent, except upon leases under seal, replevin, and all other actions for taking, detaining, or injuring goods or chattels, and tort, except as hereafter specified, *six years*. Assault and battery, false imprisonment, slander, and libel, *two years*. Actions against executors, trustees, sheriffs, etc., for taking personal property, *two years*. Actions for penalties on forfeitures by person to whom penalty is given, *one year*. On mutual and open account current, cause of action is deemed to have accrued at the time of the last item proved. Persons under disabilities may bring their action within the time limited after the removal of such disabilities. Limitations do not run against persons out of State. Actions by and against an executor or administrator of a deceased person within *two years* from granting letters testamentary or of administration. After failure of an action for any cause not affecting the right of action, a new action may be begun within *one year*. New promise must be in writing. All other actions not otherwise limited, including those on judgments of courts of record, *twenty years*.

MICHIGAN. — Real actions where defendant claims title through deed made upon sale by executor, sheriff, etc., under order of court, *five years;* where he claims title under deed made on tax sale, *ten years;* in all other cases, *fifteen years,* except when party entitled was absent from the United states, and not in British Provinces when right of action accrued, and in that case, *twenty years*. Judgments of courts of record, *ten years*. Actions of debt upon contracts not under seal, judgments of courts not of record, actions for arrears of rent, assumpsit, or case founded on any contract or liability, waste, replevin, and trover, and all other actions for taking, detaining, or injuring goods or chattels and for all actions on the case except slander and libel, *six years*. Actions against sheriffs for misconduct of deputies, and actions for personal injuries, *three years*. Trespass on land, assault and battery, false imprisonment, libel and slander, *two years*. In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved in the account. Limitations in the case of persons under disabilities begin to run from the removal of the same. In case of death, actions which survive may be brought by or against executors and administrators within *two years* after granting letters testamentary or of administration. After an action fails for any cause not affecting the right, a new action may be begun within *one year*. Time of defendant's absence from the State is not included in limitation.

MINNESOTA. — Real actions and foreclosures of mortgages, *fifteen years*. On judgments of courts of record, *ten years*. Contracts, statutory liability, trespass on real estate, actions for taking, detaining, or injuring personal property, replevin, injuries to the person or rights of another not arising on obligation, and actions for relief from fraud, dating from the time of the discovery of the same, *six years*. Actions against sheriffs, coroners, and constables, *three years*. Libel, slander, assault, battery, and false imprisonment, or other tort resulting in personal injury, *two years*. Time of defendant's absence from the State is not included. On mutual and current accounts, the cause of action accrues from the date of the last item proved on either side and suit may be brought within *six years*. Persons under disabilities other than infancy, within *one year* after removal of the same, provided the original limitation is not extended more than *five years*, and infants within *one year* after coming of age. After the failure of any action for a cause not affecting the right, a new action may be begun within *one year*.

MISSISSIPPI. —Real actions, *ten years*. On judgments rendered in another State against a citizen of this State, *three years*, other judgments, *seven years*. Actions on a promissory note, bill of exchange, or other contract in writing, waste and trespass on real estate, detinue, trover, or other action for the recovery of personal property, or damages for its conversion, *six years*. Actions on open account and verbal contracts, *three years*. Assault, battery, maiming, false imprisonment, malicious arrest, slander, and libel, and actions for death of employee, *one year*. In case of persons under disabilities, limitations begin to run from the removal of the same. Actions against executors and administrators within *four years* from the date of the letters testamentary or of administration, but no suit shall be brought within six months of the issuance of letters. After the failure of any action for a cause not affecting the right of action, a new action may be begun within *one year*. Any new promise or acknowledgment must be in writing. When the right to recover on a debt secured by mortgage is barred, the remedy on the mortgage is also barred.

MISSOURI. — Real actions, *ten years*. Writings, sealed or unsealed, for the payment of money or property, actions on covenants in deeds, and actions for relief not otherwise provided for, *ten years*. Judgments are presumed to be satisfied in *ten years*. Actions on contracts not in writing, express or implied, on open accounts, statutory liabilities, injury to the person or to personal property, actions for relief on ground of fraud, trespass on real estate, trover, detinue, and replevin, *five years*. Actions against sheriffs, coroners, or other officers, in their official capacity, statutory penalties, *three years*. Libel, slander, assault, battery, false imprisonment, and criminal conversation, *two years*. Limitations in case of persons under disabilities begin to run from the removal of the same. Any action failing for a cause not affecting the right of action may be brought anew within *one year* after such failure. Any new promise must be in writing. The time of defendant's absence from the State without leaving a family or place of abode in the State is not included in the period of limitation.

MONTANA. — Real actions and judgments of courts of record, *ten years.* Contracts in writing, *eight years.* Statutory liabilities other than penalty or forfeiture, contracts not in writing, trespass on real estate, taking, detaining, or injuring goods or chattels, relief on ground of fraud or mistake, action to establish a will, judgments of courts not of record, and actions not otherwise provided for, *five years.* Actions against a sheriff or constable except for escape, and actions for damages for death, *three years.* Statutory penalties and forfeitures, libel, slander, assault and battery, false imprisonment, or seduction, *two years.* Action against sheriff for escape, action against city for injuries by mob, action for violation of municipal ordinance, action against tax collectors, action for killing or injuring stock by railroad, *one year.* Time of defendant's absence from the State is not included. Cause of action barred in State where it accrued is barred here.

NEBRASKA. — Real actions, foreclosure of mortgages, and actions on official and penal bonds, *ten years.* Specialties, contracts in writing, foreign judgments, *five years.* Contracts not in writing express or implied, damages for failure of consideration of contract, statutory liabilities, except penalties and forfeitures, trespass on real property, trover, detinue, replevin, and relief on ground of fraud, *four years.* Libel, slander, assault and battery, malicious prosecution, false imprisonment, statutory penalties and forfeitures, and forcible entry and detainer, *one year.* Persons under disabilities may bring action within the time limited after removal of the same. New promise in writing, or partial payment revives the debt. Actions which have been barred by the laws of any other State or Territory are barred here.

NEVADA. — Real actions, except for mining claims, *five years.* Judgments and contracts in writing *six years.* Actions on open account for goods sold and delivered, or charged in store account, and contracts not in writing, *four years.* Statute liabilities other than penalties or forfeitures trespass on real estate, taking, detaining, or injuring goods and chattels, specific recovery of personal property, and relief on ground of fraud dating from the discovery thereof, *three years.* Actions for the recovery of mining claims, actions against sheriffs, etc., in their official capacity, statute penalties and forfeitures, libel, slander, assault, battery, and false imprisonment, *two years.* Statute does not run during defendant's absence from the State, or against persons under disability. Acknowledgment or new promise must be in writing. Actions barred by the laws of any other State or Territory are barred here. An action on a judgment, obligation, liability, contract for the payment of money or damages obtained or incurred out of the State must be commenced within *two years.*

NEW HAMPSHIRE. — Real actions, and actions on notes secured by mortgage, *twenty years;* persons under legal disabilities at the time of accrual of the right, *five years* from the date of removal of the same. On judgments, recognizances, and contracts under seal, *twenty years.* Trespass to the person and actions for defamatory words, *two years.* All other personal actions, *six years.* Writ of error, *three years* after judgment. *Scire facias* against bail and indorsers of writs, *one year.* Persons under disabilities may bring any personal action within *two years* after removal of the same. Any new promise, verbal or written, revives a debt.

NEW JERSEY.—Real actions, *twenty years.* On judgments, *twenty years.* On lease under seal or contract under seal for payment of money only, *sixteen years.* Trespass, detinue, trover, replevin, debt other than specialty, actions on an account and actions on the case except slander, *six years.* Assault and battery, wounding, and imprisonment, *four years.* Slander and actions for injuries to person caused by wrongful act or neglect of any person or corporation, *two years.* In case of persons under disability, limitation begins to run from date of removal. Limitations do not run against persons out of the State. Debt revived by written promise or by part payment.

•**NEW MEXICO.**— Real actions, *ten years.* Persons under disability, *one year* from the removal of the same. Judgments, *seven years.* Notes and other contracts in writing, *six years.* Accounts, contracts not in writing, injuries to property, conversion of personal property, relief on ground of fraud, and all other actions not specially provided for, *four years.* Actions against sureties on official bonds, against sheriffs, in their official capacity, injuries to person or reputation, *two years.* Suits against estates of deceased persons must be brought within *eighteen months* after death. Representatives of persons dying within one year of expiration of limitation have *one year* from death to bring suit. Persons under disability are allowed *one year* from the removal of the same. New promise must be in writing.

NEW YORK.—Real property, *twenty years.* Judgments and sealed instruments, *twenty years.* Contracts, obligations, and liabilities, express or implied, other than the above, statute liabilities other than penalty or forfeiture, actions for relief on ground of fraud, judgments of courts not of record, actions for injury to property or persons, except as otherwise provided, and for recovery of chattels, *six years.* Actions for statutory penalties or forfeitures, against sheriffs or other officer for non-payment of money collected, against constables except for an escape, actions for injury to the person resulting from negligence, and action against executor, etc., for taking or injuring personal property, *three years.* Libel, slander, assault, battery, seduction, false imprisonment, malicious prosecution, and forfeitures to the State, *two years.* Against sheriffs for official liability, except non-payment of money collected, against other officers for an escape, *one year.* All other actions, *ten years.* In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved on either side. Limitation does not run against a person during his absence from the State, unless he designate a representative in manner provided by statute. New acknowledgment or promise must be in writing.

NORTH CAROLINA.—Real actions, *twenty years;* where adverse possession is under color of title, *seven years;* persons under disabilities, *three years* after removal of the same. Judgments of a court of record, sealed instruments, foreclosure, and redemption of mortgages, *ten years.* Judgments of courts not of record, and actions by creditors of a deceased person against his representatives, *seven years.* Bonds of public officers, executors, etc., and actions for injury to any incorporal hereditament, *six years.* Actions against any railroad company for compensation for right of way, use and occupancy of land, and for damages caused by the construction of a road, *five years.* Actions on contracts or liabilities arising out of contracts, actions, on statute liabilities other than penalty of forfeiture, trespass on real property, actions for taking, converting, or injuring goods and chattels, criminal conversation or any other injury to the person or rights of another not arising on contract or otherwise provided for, actions against sureties on bonds of executors, administrators, and guardians, *three years.* Actions against sheriffs, etc., for trespass under color of office, libel, assault, battery, and false imprisonment, actions for escape against sheriffs and other officers, *one year.* Slander, *six months.* Actions for relief not otherwise provided for, *ten years.* Persons under disabilities may bring their action within the time limited after removal of the same, except in case of actions for escape. Actions by and against representatives of deceased persons, *one year* after death. New promise must be in writing. Time of absence from the State, if more than a year, is not reckoned.

NORTH DAKOTA. — Real actions *twenty years.* Actions on judgments and instruments affecting title to real property, *ten years.* Actions on other contracts and obligations, express or implied, statutory liabilities other than penalties and forfeitures, trespass on real property, taking, detaining, injuring, or for recovery of personal property, criminal conversation and other injuries to persons and rights not arising on contract, relief on ground of fraud, *six years.* Actions against sheriffs, etc., except for escape, actions for penalties and forfeitures, *three years.* Libel, slander, assault and battery, false imprisonment, and malpractice, *two years.* Escape, *one year.* All other actions, *ten years.* Limitation does not run against persons out of the State.

OHIO. — Real actions, *twenty-one years.* Persons under disabilities, *ten years* after removal of the same. Bonds of executors, administrators, guardians, sheriffs, or other officers, *ten years.* Specialties and contracts in writing, *fifteen years.* Contracts not in writing, and statutory liabilities, other that penalty or forfeiture, *six years.* Trespass on real property, trover, replevin, detinue, other actions for injury to the rights of plaintiff not arising on contract and for relief from fraud, *four years.* Forcible entry and detainer, *two years.* Libel, slander, assault, battery, malicious prosecution, false imprisonment, and malpractice, statutory penalty or forfeiture, *one year.* Actions for relief not enumerated, *ten years.* In case of persons under disabilities, limitations begin to run from the removal of the same. Any new acknowledgment must be in writing. Time of defendant's absence from the State is not included. Cause of action barred in State where it arose is barred here.

OKLAHOMA TERRITORY. — Real actions, *fifteen years.* Actions on written contracts or official bonds, *five years.* Contracts not in writing, express or implied, and statutory liabilities other than penalty or forfeiture, *three years.* Trespass on real property, taking, detaining, or injuring personal property, and relief on ground of fraud, *two years.* Foreign judgments, libel, slander, assault, battery, malicious prosecution, false imprisonment, penalties and forfeitures, *one year.* Other actions for relief, *five years.*

OREGON. — Real actions, judgments of record and sealed instruments, *ten years.* Other contracts, *six years.* Statutory liabilities other than penalty or forfeiture, waste, trespass on real estate, trover, detinue, and replevin, *six years.* Actions against sheriffs, coroners, and constables in official capacity, except for escape, penalties and forfeitures, *three years.* Libel, slander, assault and battery, and false imprisonment, or for any injury to the person, or rights of another, not arising on contract, and not specifically enumerated, *two years.* Actions against officers for an escape, *one year.* In actions on mutual, open, and current account, the cause of action is deemed to have accrued from the last item proved, but when one year shall have elapsed between any of a series of items, they are not to be deemed such an account. Limitations do not run against persons out of the State. Persons under disabilities, except infants, may bring action within *one year* after removal of the same, provided the time is not extended more than *five years,* and infants *one year* after attaining their majority. New promise must be in writing.

PENNSYLVANIA. —Real actions, *twenty-one years;* persons under disabilities, *thirty years* after the right of entry accrued. Trespass on real property, detinue, trover, replevin, actions of account and on the case, and actions of debt other than specialty, *six years.* Suits for specific performance, or to enforce trust or equity of redemption, *five years.* Judgments, mortgages, and sealed instruments are presumed paid after *twenty years,* unless such presumption is positively rebutted. Trespass to the person not resulting in death, *two years;* in case of death, *one year.* Slander and libel, *one year.* Limitations, in case of persons under disabilities, begin to run from removal of the same. Cause of action barred in State where it arose is barred here.

RHODE ISLAND. —Actions to recover real property are not limited, but ten years of quiet, uninterrupted, and adverse possession is a good evidence of title. Slander, *one year.* Trespass, *four years.* Actions of account, except such as concern the trade or merchandise between merchant and merchant; actions on the case, except for slander, debt founded on contract, except specialty, actions for arrearages of rent, actions of detinue and replevin, *six years.* Debt other than the preceding and covenant, *twenty years.* In case of persons under disabilities, the limitation begins to run from the removal of the same. Actions against executors and administrators, except for funeral charges and expenses of last illness, cannot be brought for *six months* after first publication of notice of appointment, and must be brought within *two years* after such notice. Limitation does not run in favor of a defendant during his absence from the State unless he leave property within the State which can be taken by ordinary process of attachment.

SOUTH CAROLINA. —Real actions, *ten years.* Judgments and sealed instruments, other than sealed notes and bonds for the payment of money only not secured by mortgage, *twenty years.* Other contracts, statutory liabilities, except forfeitures and penalties, trespass on real estate, trover, detinue, and replevin, criminal conversation, or any other injury to the person or rights of another not arising on contract, and relief from fraud, *six years*. Actions against sheriffs, coroners, constables in official capacity, except for escapes, and actions for penalties and forfeitures *three years*. Libel, slander, assault, battery, false imprisonment, and penalties and forfeitures to State, *two years*. Actions against officers for an escape, *one year ;* other actions for relief, *ten years*. In actions of account, the limitation begins to run from the last item proved on either side. Persons under disabilities may bring action for recovery of real estate within *five years* after the removal of the same, provided the time is not extended more than ten years; in other cases within *one year* of such removal, but not to extend time more than five years. Period of defendant's absence from the State if more than one year, is not included.

SOUTH DAKOTA.—Real actions and actions on judgments rendered in the State, and on sealed instruments, *twenty years*. Other judgments, *ten years*. Actions on other contracts, express or implied, statutory liabilities other than penalties or forfeitures, trespass on real property, taking, detaining, or injuring personal property, or recovering same, criminal conversation, or other injury to rights of others not arising on contract, relief on ground of fraud, *six years*. Actions against sheriffs, etc., except for escape, and for penalties and forfeitures, *three years*. Libel, slander, assault and battery, and false imprisonment, *two years*. Actions against sheriff for escape, *one year*. Other actions, *ten years*. Limitation does not run against person out of the State.

TENNESSEE.—Real actions, *seven years*. Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers, on their official bonds, judgments, mortgages, and all other cases not expressly provided for, *ten years*. Actions against the sureties of guardians, executors, administrators, sheriffs, clerks, and other public officers, and actions for rent, and for use and occupation of land, and on other contracts not mentioned, *six years*. Injuries to real or personal property, detinue, and trover, *three years*. Libel, injuries to person, false imprisonment, malicious prosecution, seduction, breach of promise, and statutory penalties, *one year*. Slander, *six months*. A new action may be begun within *one year* after the reversal or arrest of judgment in the original. Persons under disabilities may bring action within *three years* after removal of the same, unless the limitation is less than three years, in which case action must be brought within the time limited after such removal. Actions by a resident of the State against an executor, etc., must be brought within *two years and six months* after his appointment, by a non-resident within *three years and six months*. Period of defendant's absence from the State is not included. Actions barred by the laws of the State where they accrued are barred here.

TEXAS.–Real actions, against one in possession under color of title, *three years*. *Five years* peaceable possession of real estate, cultivating and using the same, paying taxes thereon, and claiming under registered deed, not forged, gives good title. *Ten years* peaceable possession, cultivation, and enjoyment, without evidence of title, gives full title to one hundered and sixty acres, and to all beyond in actual possession. Judgments and suits for specific performance of agreement to convey land, *ten years*. Debt on written contract, by copartners for settlement of partnership accounts, mutual current accounts between merchants, and all other causes of action not specially enumerated, *four years.* Injuries to the person or property of another, conversion or detention of personal property, forcible entry and detainer of real estate, actions on open accounts, except between merchants, and contracts not in writing, *two years.* Injuries to the character or reputation of another, and breach of promise, *one year.* Limitation does not run against persons under disability.

UTAH. — Real actions, *seven years.* In case of disability, two years after the removal thereof. Judgments, *eight years.* Contracts or obligations in writing, and actions for mesne profits of land, *six years.* Contracts not in writing, and open accounts for goods, *four years.* Statute liabilities, other than penalties or forfeitures, trespass on real estate, detinue, replevin, conversion of personal property, and relief on the ground of fraud, dating from the discovery thereof, *three years.* Actions against sheriffs, etc., and actions for death caused by wrongful act or neglect, *two years.* Statutory penalties and forfeitures, libel, slander, assault and battery, or false imprisonment, *one year.* Period of defendant's absence from the Territory is not included. New acknowledgment or promise must be in writing.

VERMONT. — Real actions and actions on covenants of seizin in deeds of land, *fifteen years.* Witnessed promissory notes, *fourteen years.* Judgments of courts of record, specialties, and covenants except of seizin, *eight years.* Debt on any contract, obligation, or liability, not under seal, or on judgments of courts not of record, debt for rent, actions of account, assumpsit, or case founded on any contract or liability; trespass on land, replevin, trover, and detinue, and actions on the case, except libel and slander, *six years.* Action against sheriff for act of deputy, *four years.* Assault and battery, and false imprisonment, *three years.* Libel and slander, *two years.* Executors and administrators may bring actions which survive *two years* after death of the party entitled. Time of absence from the State without known attachable property in the State is not computed in the limitation. Limitations in case of persons under disabilities begin to run from the removal of the same. New promise must be in writing.

VIRGINIA.— Land east of the Alleghanies, *fifteen years;* west of the Alleghanies, *ten years.* Contracts in writing under seal, *ten years;* not under seal, *five years.* Bonds of indemnity, bonds of executors, administrators, curators, committees, guardians, sheriffs, clerks, sergeants, or other fiduciary or public officers, *ten years.* Recognizance of bail in a civil suit, *three years* after the right to sue out execution shall have accrued, omitting such part of the *three years* as the right to sue shall have been suspended by injunction, *supersedeas,* or other legal process; other recognizance, *ten years.* Articles charged on the store account, *two years;* if upon any other contract, *three years.* Actions for personal injury or death, *one year.* Actions between partners for settlement, and accounts concerning the trade of merchandise between merchant and merchant, *five years* from cessation of dealings. All other personal actions, *five years*. Acknowledgment of a debt must be in writing. Persons under disabilities may bring actions within the time limited after the removal of their disabilities, provided it be within *twenty years* from the original accrual of the right. Actions failing by abatement, arrest, or reversal of judgment, may be brought again within *one year*.

WASHINGTON. — Real actions, *ten years*. Judgments, contracts in writing, actions for rents and profits or use and occupation of real estate, *six years*. Actions by an heir or assign, or by a ward or one claiming under him, for the recovery of land sold by an executor, administrator, or guardian as the case may be, *five years;* except that such action may be brought within three years of removal of disability of a ward. Waste or trespass upon real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery thereof; or for injury to the person or rights of another, not specially enumerated, contracts not in writing, relief on ground of fraud, actions against sheriffs, etc., except for escape, statute penalties and forfeitures to party aggrieved, seduction, and breach of promise of marriage, *three years*. Libel, slander, assault and battery, false imprisonment, and penalties to the State, *two years*. Action against officer for escape, and against executors or administrators, *one year*. On a claim rejected by executor or administrator *three months*. Limitation does not run against parties under disability, until after the removal of the same. Causes of action arising in another State or Territory, between non-residents of this State, and barred by law there barred here also. New acknowledgment of promise must be in writing.

WEST VIRGINIA. — Real actions, *ten years;* persons under disabilities, *five years* after the removal of the same, provided the whole limitation is not more than *twenty years*. Indemnity bonds, bonds of executors, administrators, guardians, sheriffs, or other public officers, and other instruments under seal, awards and contracts in writing not under seal, *ten years*. Other contracts, *five years*. Partnership accounts and accounts between merchant and merchant, *five years* from last dealings. Actions on recognizances other than bail in a civil suit, and judgments, *ten years*. Recognizance of bail in civil suit, *three years*. All other actions, *five years*. Actions on judgments barred where rendered are barred here, and actions or contracts made to be performed in another State and barred there, are barred here also. Limitation does not run in favor of a resident of the State during his absence therefrom or while absconding or concealing himself. New acknowledgment or promise must be in writing.

WISCONSIN. — Real actions, *twenty years;* persons under disabilities, *five years* after removal of the same. On adverse possession of *ten years* under claims of title under written instrument or judgment is in certain cases a bar. Judgments of courts of record of the State of Wisconsin or of the United States sitting in the State, and sealed instruments, when the cause of action accrues within the State, *twenty years*. Judgments of other courts of record and sealed instruments accruing without the State and actions for damages for flowing land, *ten years*. Other contracts, obligations, or liabilities, including actions on municipal bonds and coupons, judgments of courts not of record, statutory liabilities other than penalties or forfeitures, injury to property, real or personal, injury to person, character, or rights not arising on contract not otherwise provided for, and actions for recovery of personal property or damages for detention, *six years*. Actions against sheriffs, coroners, and constables for acts done in their official capacity, except for escapes, *three years.* Statutory penalties and forfeitures, libel, slander, assault, battery, false imprisonment, and actions for negligently or wrongfully causing the death of another, *two years.* Actions against sheriffs, etc., for escapes, *one year.* Persons under disabilities, except infants, may bring action after the disability ceases, provided the period is not extended more than *five years*, and infants one year after coming of age; actions by representatives of deceased persons, *one year* from death; against the same, *one year* from granting letters testamentary or of administration. New promise must be in writing.

WYOMING.—Real actions, *ten years.* Bonds of executors, administrators, guardians, sheriffs, and other officers, all bonds required by statute, and causes of action not specially enumerated, *ten years.* Specialties and contracts in writing, *five years.* Contracts not in writing, and statutory liabilities other than forfeiture or penalty, *eight years*, but on all foreign claims, judgments, or contracts contracted or incurred before the debtor became a resident of the Territory, actions must be commenced within *two years* after he establishes his residence in the Territory. Trespass on real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery of the same, action for injury to plaintiff's rights not arising on contract and not otherwise provided for, *four years.* Libel, slander, assault and battery, malicious prosecution, or false imprisonment, *one year.* Limitations in personal actions do not run against persons under disabilities until after the removal of the same. Time of defendant's absence from the Territory or absconding or concealment is not reckoned. Actions on causes arising out of the Territory between non-residents and barred there, cannot be maintained here. New acknowledgment or promise must be in writing.

CHAPTER XXIII.

INTEREST AND USURY.

SECTION I.

WHAT INTEREST IS, AND WHEN IT IS DUE.

INTEREST means a payment of money for the use of money. In most civilized countries the law regulates this; that is, it declares how much money may be paid or received for the use of money; and this is called legal interest; and if more is paid or agreed to be paid than is thus allowed, it is called usurious interest. By interest is commonly meant legal interest; and by usury, usurious interest.

Interest may be due, and may be demanded by a creditor, on either of two grounds. One, a bargain to that effect; the other, by way of damages for withholding money that is due. Indeed, it may be considered as now the settled rule, that wherever money is withheld which is certainly due, the debtor is to be regarded as having promised legal interest for the delay. And upon this implication, as on most others, the usage of trade, and the customary course of dealings between the parties, would have great influence.

Thus, in New York, it was held, that, where it was known to one party that it was the uniform custom of the other to charge interest upon articles sold or manufactured by him after a certain time, the latter was allowed to charge interest accordingly.

In general, we may say that interest is allowed by law as follows: on a debt due by judgment of court, it is allowed from the rendition of judgment; and on an account that has been liquidated, or settled, from the day of the liquidation; for goods sold, from the time of the sale, if there be no credit, and if there be, then from the day when the credit expires; for rent, from the time that it is due, and this even if the rent is payable otherwise than in money, but is not so paid; for money paid for another or lent to another, from the payment or loan.

Interest is not generally recoverable upon claims for unliquidated damages, nor in actions founded on tort. By *unliquidated damages* is meant damages not agreed on, and of an uncertain amount, and which the jury must determine. By *torts* is meant wrongs, or injuries inflicted. But although interest cannot be given under that name, in actions of this sort, juries are sometimes at liberty to consider it in estimating the damages.

It sometimes happens that money is due, but not now payable; and then the interest does not begin until the money is payable. As if a note be on demand, the money is always due, but it is not payable until demand; and therefore is not on interest until demand. But a note payable at a certain time, or after a certain period, carries interest from that time, whether it be demanded or not.

The laws which regulate interest and prohibit usury are very various, and are not perhaps precisely the same in any two of our States. Formerly, usury was looked upon as so great an offence, that the whole debt was forfeited thereby. The law now, however, is—generally, at least—much more lenient. The theory that money is like any merchandise, worth what it will bring and no more, and that its value should be left to fix itself in a free market, is certainly gaining ground. In many States there are frequent efforts so to change the statutes of usury that parties may make any bargain for the use of money which suits them; but when they make no bargain, the law shall say what is legal interest. And, generally, the forfeiture is now much less than the whole debt.

At the close of this chapter will be found a statement of the usury laws of the states.

There is no especial form or expression necessary to make a bargain usurious. It is enough for this purpose if there be a substantial payment, or promise of payment, of more than the law allows, either for the use of money lent, or for the forbearance of money due and payable. One thing, however, is certain: there must be a usurious intention, or there is no usury. That is, if one miscalculates, and so receives a promise for more than legal interest, the error may be corrected, the excess waived, and the whole legal interest claimed. But if one makes a bargain for more than legal interest, believing that he has a right to make such a bargain, or that the law gives him all that he claims, this is a mistake of law, and does not save the party from the effect of usury.

It may be well to remark, that the law makes a very wide distinction between a *mistake of fact* and a *mistake of law*. Generally, it will not permit a party to be hurt by a mistake of fact; but it seldom suffers any one to excuse himself by a mistake of law, because it holds that everybody should know the law, and because it would be dangerous to permit ignorance of the law to operate for any one's benefit.

The question has been much discussed, whether the use of the common tables which are calculated on the supposition that a year consists of 360 days, is usurious. In New York, it has been held that it is; but in Massachusetts, and some other States, it is held that the use of such tables does not render the transaction usurious. We think this latter the better opinion.

If a debtor requests time, and promises to pay for the forbearance legal interest, and as much more as the creditor shall be obliged to pay for the same money, this is not a usurious contract. And, even if usurious interest be actually taken, this, although strong evidence of an original usurious bargain and intent, is not conclusive, but may be rebutted by adequate proof or explanation.

When a statute provides that a usurious contract is wholly void, such a contract cannot become good afterwards; and therefore a note which is usurious, if it be therefore void by law in its inception, is not valid in the hands of an innocent indorsee. But it is otherwise where the statute does not declare the contract void on account of the usury. If a note, or any securities for a usurious bargain, be delivered up by the creditor and cancelled, and the debtor thereupon promises to pay the original debt and lawful interest, this promise is valid.

New securities for old ones which are tainted with usury are equally void with the old ones, or subject to the same defence. Not so, however, if the usurious part of the original securities be expunged, and not included in the new; or if the new ones are given to third parties, who were wholly innocent of the original usurious transaction. And if a debtor suffers his usurious debt to be sued, and a judgment recovered against him for the whole amount, it is then too late for him to take any advantage of the usury.

So, if land or goods be mortgaged to secure a usurious debt, and afterwards conveyed to an innocent party, subject to such mortgage, the latter cannot set up the defence of usury, and thereby defeat an action to enforce the mortgage.

Usurers resort to many devices to conceal their usury; and sometimes it is very difficult for the law to reach and punish this offence. A common method is for the lender of money to sell some chattel, or a parcel of goods, at a high price, the borrower paying this price in part as a premium for the loan. In England, it would seem from the reports to be quite common for one who discounts a note to do this nominally at legal rates, but to furnish a part of the amount in goods at a very high valuation. In all cases of this kind, or rather in all cases where questions of this kind arise, the court endeavors to ascertain the real character of the transaction. Such a transaction is always suspicious, for the obvious reason that one who wants to borrow money is not very likely to desire at the same time to buy goods at a high price. But the jury decide all questions of this kind, and it is their duty to judge of the actual intention of the parties from all the evidence offered. If that intention is substantially that one should loan his money to another, who shall therefore, in any manner whatever, pay to the lender more than legal interest, it is a case of usury. "Where the real truth is a loan of money," said Lord Mansfield, "the wit of man cannot find a shift to take it out of the statute." If this great judge meant only that, whenever legal evidence shows the transaction to be a usurious loan, the law pays no respect whatever to any pretence or disguise, this is certainly true. But the wit of man does undoubtedly devise many "shifts," which the law cannot detect. There seems to be a general rule in these cases in reference to the burden of proof; the borrower must first show that he took the goods on compulsion; and then it is for the lender to prove that no more than their actual value was received or charged for them.

If one should borrow stock at a valuation much above the market rate, and agree to pay interest on this value for the use of the stock to sell or pledge, this would be usurious.

One may lend his stock, and may, without usury, give the borrower the option to replace the stock, or to pay for it at even a high value, with interest. But, if he reserves this option to himself, the bargain is usurious, because it gives the lender the right to claim more than legal interest. So, the lender may reserve either the dividends or the interest, if he elects at the time of the loan; but he cannot reserve the right of electing at a future time, when he shall know what the dividends are.

A contract may seem to be two, and yet be but one, if the seeming two are but parts of a whole. Thus, if A borrows one thousand dollars, and gives a note promising to pay legal interest for it, and then gives another note for (or otherwise promises to pay) a further sum, in fact for no consideration but the loan, this is all one transaction, and it constitutes a usurious contract.

But if there be a loan on legal terms, with no promise or obligation on the part of the borrower to pay any more, this might not be invalidated by a mere understanding that the borrower should, when the money was paid by him, make a present to the lender for the accommodation. And if, after a payment has been made, which discharged all legal obligation, the payer voluntarily adds a gift, this would not be usurious. But in every such case the question for a jury is, What was this additional transfer of money, in fact; was it a voluntary gift, or was it the payment of a debt? If an honest gift, it was not usurious; if a payment, it was usurious.

A foreign contract, valid and lawful where made, may be enforced in a State in which such a contract, if made there, would be usurious. But if usurious where it was made, and by reason of that usury, wholly void in that State, if it is pu in suit in another State where the penalty for usury is less, it cannot be enforced under this mitigated penalty; but it is wholly void there also.

SECTION II.

A CHARGE FOR RISK OR FOR SERVICE.

It is undoubtedly lawful for a lender to charge an extra price for the risk he incurs, provided that risk be perfectly distinct and different from the merely personal risk of the debtor's being unable to pay. If anything is paid for this last risk, it is certainly usury.

So, one may charge for services rendered, for brokerage, or for rate of exchange, and may even cause a domestic loan or discount to be actually converted into a foreign one, so as to charge the exchange; and this would not be usurious. But here, as before, and indeed throughout the law of usury, it is necessary to remember that the actual intention, and not the apparent purpose or form of the transaction, must determine its character. So, if one lends money to be used in business, and lends it upon such terms that he becomes a partner in fact with those who use it, taking his share of the profits, and becoming liable for the losses, this is not usurious.

So, if one enters into a partnership, and provides money for its business, and the other party is to bear all the losses, and also to pay the capitalist more than legal interest as his share of the profits, this is not usurious, because there is no loan, if there be in fact a partnership; for then there is a very important risk, as he becomes liable for all the debts of the partnership.

The banks always get more than legal interest by their way of discounting notes and deducting the whole interest from the amount they give. This is perfectly obvious if we take an extreme case; as if a bank discounted a note of a thousand dollars at fifteen years, in Massachusetts, the bank would discount the interest of all the fifteen years; the borrower would receive one hundred dollars, and at the end of fifteen years h would pay back one thousand dollars, which is equivalent to paying nine hundred dollars for the use of one hundred for fifteen years, whereas the legal interest would be but ninety dollars. But this method is now established by usage and sanctioned by law. It should, however, be confined to dis counts of negotiable paper, not having a very long time to run. For the rule is founded upon usage, and the usage goes no further.

SECTION III.

THE SALE OF NOTES.

THERE are, perhaps, no questions in relation to interest and usury of more importance than those which arise from the sale of notes or other securities. In the first place, there is no doubt whatever that the owner of a note has as good a right to sell it for the most he can get, as he has to sell any goods or wares which he owns. There is here no question of usury, because there is no loan of money, nor forbearance of debt. But, on the other hand, it is quite as certain that if any person makes his own note, and sells that for what he can get, this, while in appearance the sale of a note, is in fact the giving of a note for money. It is a loan and a borrowing, and nothing else. And if the apparent sale be for such a price that the seller pays more than legal interest, or, in other words, if the note bear interest and is sold for less than its face, or is not on interest, and more than interest is discounted, it is a usurious transaction. Supposing these two rules to be settled, the question in each case is, under which of them does that case come, or to which of them does it draw nearest.

We are not aware of any general principle so likely to be of use in determining these questions as this: if the seller of a note acquired it by purchase, or if it is his for money advanced or lent by him to its full amount, he may sell it for what he can get; but if he be the maker of the note, or the agent of the maker, and receives for the note less than would be paid him if only a lawful discount were made, it is a usurious loan. In other words, the first holder of a note (and the maker of a note is not and cannot be its first holder) must pay to the maker the face of the note, or its full amount. And after paying this, he may sell it, and any subsequent purchaser may sell it as merchandise. The same rule must apply to corporations, and all other bodies or persons who issue their notes or bonds on interest. If sold by brokers for them, for less than the full amount, it is usurious. Nor can such notes come into the market free from the taint and the defence of usury, unless the first party who holds them pays for them their full value.

But then comes another question. If a note be offered for sale, and be sold for less than its face, and the purchaser supposes himself to buy it from an actual holder and not from the maker, can the maker interpose the defence that it was actually usurious, on the ground that the seller was only his agent? I should say that he could not; that there can be no usury unless this is intended; and that the guilty intention of one party cannot affect another party who was innocent.

I should say, also, that one who, having no interest in a note, indorses or guarantees it for a certain premium, will be liable for its face; he does not now add his credit to the value of his property and sell both together, as where he indorses a note which he holds himself, but sells his credit alone. This transaction I should not think usurious. And if it was open to no other defence, as fraud, for example, and was in fact what it purported to be, and not a mere cover for a usurious loan, we know no good reason why such indorser or guarantor should not be held liable to the full amount of his promise.

SECTION IV.

COMPOUND INTEREST.

COMPOUND interest is sometimes said to be usurious; but it is not so; and even those cases which speak of it as "savoring of usury" may be thought to go too far, unless every hard bar gain for money is usurious. As the authorities now stand, however, a contract or promise to pay money with compound interest cannot, generally, be enforced. On the other hand it is neither wholly void, nor attended with any penalty, as it would be if usurious; but is valid for the principal and simple interest only.

Nevertheless, compound interest is sometimes recognized as due by courts of law, as well as of equity; and sometimes, too, by its own name. Thus, if a trustee be proved to have had the money of the party for whom he is trustee (who is called in law his *cestui que trust*) for a long time, without accounting for it, he may be charged with the whole amount, reckoned at compound interest, so as to cover his unlawful profits. If compound interest has accrued under a bargain for it, and been actually paid, it cannot be recovered back, as money usuriously paid may be. And if accounts are agreed to be settled by annual rests, which is in fact compound interest, or are actually settled so in good faith, the law sanctions this. Sometimes, in cases of disputed accounts, the courts direct this method of settlement.

Where money due on interest has been paid by sundry instalments, the mode of adjusting the amount which has the best authority, and the prevailing usage in its favor, seems to be this: Compute the interest due on the principal sum to the time when a payment, either alone or in conjunction with preceding payments, shall equal or exceed the interest due on the principal. Deduct this sum, and upon the balance cast interest as before, until a payment or payments equal the interest due; then deduct again, and so on.

ABSTRACTS OF THE USURY LAWS OF THE STATES AND TERRITORIES.

These laws are stated from the latest information, but are constantly undergoing change, and are likely to be so until restrictions upon interest are abolished, as they are now in some States.

ALABAMA.— Legal interest, eight per cent. Plea of usury defeats recovery of all interest.

ARIZONA. — Legal interest, six per cent., but parties may agree in writing for any rate.

ARKANSAS. — Legal interest, six per cent., but parties may contract for any rate not exceeding ten per cent. Contracts for more than ten per cent. are void, both as to principal and interest.

CALIFORNIA. — Legal interest, seven per cent., but parties may agree in writing for any rate.

CANADA, DOMINION OF. — Legal interest, generally six per cent., with the right to agree on what parties will, but with exceptions in different provinces, especially as to banks and other corporations, and loans on different kinds of security.

COLORADO.— Legal interest, 8 per cent., but parties may agree in writing upon any rate.

CONNECTICUT.— Legal interest, six per cent., in the absence of any agreement, and no more can be recovered after maturity of obligation. No usury law.

DELAWARE.— Legal interest, six per cent. Penalty for taking more, forfeiture of the money lent — half to the prosecutor, half to the State.

DISTRICT OF COLUMBIA.— Legal interest, six per cent. Ten per cent. may be paid on written agreement. Contract in writing for more than ten per cent. or verbal contract for more than six per cent. forfeits all interest.

FLORIDA.— Legal interest, eight per cent. Contracts for more than ten per cent. are void and principal only can be recovered.

GEORGIA.— Legal interest, seven per cent. Not exceeding eight per cent. may be recovered if agreed upon in writing. Excess forfeited.

IDAHO.—Legal interest, seven per cent. Parties may agree in writing for any rate not exceeding twelve per cent. Penalty for greater rate, ten per cent. per annum on principal, payable to school fund of county.

ILLINOIS.— Legal interest, five per cent. Parties may agree upon seven per cent. in writing. If more is agreed on or is taken upon any contract, verbal or written, only the principal can be recovered.

INDIANA.— Legal interest, six per cent. Eight per cent. may be agreed upon in writing. It may be taken for the period of a year or less in advance. Excess cannot be recovered, and, if paid, shall be considered as paid on account of the principal.

IOWA.— Legal interest, six per cent. Parties may agree in writing for eight per cent. If contract be for more, the creditor recovers only the principal, and 8 per cent. on the amount of the contract is forfeited to the State.

KANSAS.— Legal interest, six per cent. Parties may stipulate in writing for any rate not exceeding ten per cent. If more than ten per cent. be contracted for double the excess is forfeited.

KENTUCKY.— Legal interest, six per cent. Extra interest forfeited; if paid, may be recovered back.

LOUISIANA.— Legal interest, five per cent. Eight per cent. may be stipulated in writing, and a higher rate may be collected if embodied in the obligation or as discount; but any agreement for more than eight per cent. forfeits the entire interest.

MAINE.— Legal interest, six per cent. There are no usury laws.

MARYLAND.— Legal interest six per cent. Excess forfeited.

MASSACHUSETTS.— Legal interest six per cent. Any rate of interest or discount may be made by written agreement. Debtor may discharge loan of less than one thousand dollars by tender of principal and eighteen per cent. interest, with not exceeding five dollars for expenses.

MICHIGAN.—Legal interest, five per cent. Parties may agree in writing for seven per cent. If more is agreed for, all interest is forfeited.

MINNESOTA.—Legal interest, six per cent. Parties may agree in writing for ten. Excess, if paid, may be recovered. Usurious contracts are void, except as to *bona fide* purchasers of negotiable paper before maturity. Rate after maturity same as before; contract for more forfeits all interest.

MISSISSIPPI.—Legal interest, six per cent. Parties may agree in writing for ten per cent. If more be agreed for, the whole interest will be forfeited.

MISSOURI.—Legal interest, six per cent; but parties may agree in writing for any rate not to exceed 8 per cent. If more be taken or agreed for, the creditor recovers only the principal and legal interest.

MONTANA.—Legal interest, eight per cent. Parties may agree in writing for any rate.

NEBRASKA.—Legal interest, seven per cent. Parties may agree on any rate not exceeding ten per cent. On proof of illegal interest, plaintiff recovers only principal.

NEVADA.—Legal interest, seven per cent. But parties may agree in writing for any rate.

NEW HAMPSHIRE.—Legal interest, six per cent. A person receiving more forfeits threefold the excess; but contracts are not invalidated by securing or taking more, and principal and legal interest may be recovered.

NEW JERSEY.—Legal interest, six per cent. On usurious contract, principal only can be recovered.

NEW MEXICO.—Legal interest, six per cent., but parties may agree for twelve per cent. If more be paid, double the amount so paid may be recovered. Usury is also punishable by fine.

NEW YORK.—Legal interest, six per cent. A contract for more than legal interest is wholly void. If more than legal interest is paid, it may be recovered back within a year by payer, or within the next three years by the overseers of the poor. No corporation can interpose the defense of usury; nor can a joint-stock company having the powers of a corporation. When loans on demand of five thousand dollars or more are made on security of bills of lading, negotiable instruments, etc., parties may agree in writing on any rate of compensation. Usury is a misdemeanor punishable by fine or imprisonment.

NORTH CAROLINA.—Legal interest, six per cent. On usurious contracts no interest is recoverable. If usurious interest be paid, twice the amount may be recovered by debtor if suit be brought within two years.

NORTH DAKOTA.—Legal interest, seven per cent. Twelve per cent. may be contracted for in writing. On usurious contract only principal can be recovered. If usurious interest be paid, twice the amount may be recovered back if sued for in two years.

OHIO.— Legal interest, six per cent. Any rate not exceeding eight per cent. may be agreed upon in writing. On usurious contract only principal and six per cent. interest can be recovered.

OKLAHOMA TERRITORY.— Legal interest, seven per cent. Twelve per cent. may be contracted for. Usury works forfeiture of all interest.

OREGON.—Legal interest, six per cent. Parties may agreee for ten per cent. Usury works a forfeiture of the principal and interest.

PENNSYLVANIA.— Legal interest, six per cent. Excess cannot be recovered. If paid, may be recovered back if sued for within six months. Commission merchants and agents may contract with parties out of the State for seven per cent.

RHODE ISLAND.—Legal interest, six per cent. Any higher rate may be agreed upon.

SOUTH CAROLINA.—Legal interest, seven per cent. Parties may agree in writing for eight per cent. Usury works a forfeiture of entire interest. If usurious interest be paid, double the amount may be recovered.

SOUTH DAKOTA.—Legal interest, seven per cent. Parties may contract for twelve per cent. Usury forfeits entire interest, and is a misdemeanor punishable by fine and imprisonment.

TENNESSEE.—Legal interest, six per cent. Excess is forfeited. Loans on mortgages of land in other states may bear interest at rates permitted in such States. Usurious interest if paid may be recovered. Usury is a misdemeanor.

TEXAS.— Legal interest, six per cent. Parties may agree in writing for ten per cent. If more is agreed for, no interest can be recovered; if paid, double the amount can be recovered.

UTAH.— Legal interest, eight per cent. Any rate may be agreed on in writing.

VERMONT.—Legal interest, six per cent. A person paying more may recover excess.

VIRGINIA.—Legal interest, six per cent. If more be charged, no interest can be recovered. Usurious interest paid may be recovered within one year.

WASHINGTON.—Legal interest, six per cent. Any rate not exceeding twelve per cent. may be agreed upon in writing. If more be contracted for, only the principal less the whole amount of interest contracted for can be recovered.

WEST VIRGINIA.—Legal interest, six per cent. Contracts for a greater amount are void as to the excess.

WISCONSIN.— Legal interest, six per cent.; but parties may agree in writing upon a rate not exceeding ten per cent. No interest can be collected on usurious contracts, and, if excessive interest be paid, treble the amount thereof may be recovered, if sued for within one year.

WYOMING.— Legal interest, eight per cent. Any rate up to twelve per cent. may be agreed upon in writing.

CHAPTER XXIV.

THE LAW OF PLACE.

SECTION I.

WHAT IS MEANT BY THE LAW OF PLACE.

If either of the parties to a contract is not at home, or if both are not at the same home, when they enter into the contract, or if it is to be executed abroad, or if it comes into litigation before a foreign tribunal, then the rights and the obligations of the parties may be affected either by the law of the place of the contract, or by the law of the domicil or home of a party, or by the law of the place where the thing is situated to which the contract refers, or by the law of the tribunal before which the case is litigated. All of these are commonly included in the Latin phrase *lex loci*, or, as the phrase is translated, the Law of Place.

It is obvious that this law must be of great importance wherever citizens of distinct nations have much commercial intercourse with each other. In this country it has an especial and very great importance, from the circumstance that, while the citizens of the whole country have at least as much business connection with each other as those of any other nation, our country is composed of forty-five separate and independent sovereignties, which are, for most commercial purposes, regarded by the law as foreign to each other.

SECTION II.

THE GENERAL PRINCIPLES OF THE LAW OF PLACE.

The general principles upon which the law of place depends are four. First, every sovereignty can bind, by its laws, all persons and all things within the limits of the State. Second, no law has any force or authority of its own, beyond those limits. Third, by the comity or courtesy of nations,—aided in our case as to the several States, by the peculiar and close relation between the States, and for some purposes by a constitutional provision,—the laws of foreign States have a qualified force and influence.

The fourth rule is perhaps that of the most frequent application. It is, that a contract which is not valid where it is made is valid nowhere else; and one which is valid where it is made is valid everywhere. Thus a contract made in Massachusetts, and there void because usurious, was sued in New Hampshire and held to be void there, although the law of New Hampshire would not have avoided it if it had been made there. But courts do not take notice of foreign revenue laws, and will enforce foreign contracts made in violation of them. If contracts are made only orally, where by law they should be in writing, they cannot be enforced elsewhere where writing is not required; but if made orally where writing is not required, they can be enforced in other countries where such contracts should be in writing. The rule, that a contract which is valid where it is made is valid everywhere, is applicable to contracts of marriage.

As contracts relate either to movables or immovables, or, to use the phraseology of our own law, to personal property or to real property, the following distinction is taken. If the contract refers to personal property (which never has a fixed place, and is therefore called, in some systems of law, movable property), the place of the contract governs by its law the construction and effect of the contract. But if the contract refers to real property, it is construed and applied by the law of the place where that real property is situated, without reference, so far as the title is concerned, to the law of the place of the contract. Hence, the title to land can only be given or received as the law of the place where the land is situated requires and determines. And it has been said that the same rule may properly apply to all other local stock or funds, although of a personal nature, or so made by the local law, such as bank stock, insurance stock, manufacturing stock, railroad shares, and other incorporeal property, owing its existence to, or regulated by peculiar local laws; and therefore no effectual transfer can be made of such property, except in the manner prescribed by the local regulations.

As to the capacity of a person to enter into contracts, it is undoubtedly the general rule, that this is determined by the law of his domicil; and whatever that permits him to do he may do anywhere.

SECTION III.

THE PLACE OF THE CONTRACT.

A CONTRACT is made *when* both parties agree to it, and not before. It is therefore made *where* both parties agree to it, if this is one place. But if the contract be made by letter, or by separate signatures to an instrument, the contract is then made where that signature is put to it, or that letter is written, which in fact completes the contract. But this rule is subject to a very important qualification, when the contract is made in one place, and is to be performed in another place; for then, in general, the law of this last place must determine the force and effect of the contract, for the obvious and strong reason, that parties who agreed that a certain thing should be done in a certain place intended that a thing should be done there, which was lawful there, and therefore bargained with reference to the laws of the place, not in which they stood, but in which they were to act. This principle has been applied to an ante-nuptial contract, and it was held, that when parties marry in reference to the laws of another country as their intended domicil, the law of the intended domicil governs the construction of their marriage contract as to the rights of personal property.

But, for many commercial transactions, both of these rules seem to be in force; or rather to be blended in such a way as to give the parties an option as to what shall be the place of the contract, and what the rule of law which shall apply to it. Thus, a note written in New York, and expressly payable in New York, is, to all intents and purposes, a New York note; and if more than seven per cent. interest was promised, it would be usurious, whatever was the domicil of the parties. If made in New York, and no place of payment is expressed, it is payable and may be demanded anywhere, but would still be a New York note. But if made in New York, but expressly payable in Boston (where any amount of interest may be agreed for), and promised to pay ten per cent. interest, when payment of the note was demanded in Boston, the promise of interest would be held valid. So, if the note were made in New York, payable in Boston, and promising to pay ten per cent. interest, it would not be usurious.

In other words, if a note is made in one place, but is payable in another, the parties have their option to make it bear the interest which is lawful in either place.

If the contract be entered into for money, and is made in one place but is payable at another place on a day certain, and no interest be stipulated, and payment be delayed, interest by way of damages shall be allowed, according to the law of the place of payment, where the money may be supposed to have been required by the creditor for use, and where he might be supposed to have borrowed money to supply the deficiency thus occurring, and to have paid the rate of interest of that country. If a note made in New York and payable in Massachusetts were demanded in Massachusetts and unpaid, and afterwards put in suit in Massachusetts, and personal service made on the promisor there, I should say that any interest which it bore should be recovered, provided it were lawful in Massachusetts. And indeed, generally, that such a note, being made in good faith, might always bear any interest lawful where it was payable. But a note made in a State where the law permitted only a low interest, and intended in fact to be paid in that State, but written payable in some State permitting higher interest, merely to get this higher interest, could not by this trick escape the usury laws of the State where it was made, and get the higher interest.

SECTION IV.

DOMICIL.

It is sometimes very important to determine where a person has his domicil, or Home. In general, it is his residence; or that country in which he permanently resides. He may change it by a change of place *both* in fact and intent, but not by either alone. Thus, a citizen of New York, going to London and remaining there a long time, but without the intention of relinquishing his home in New York, does not lose that home. And, if he stays in New York, his *intention* to live and remain abroad does not affect his domicil until he goes in fact.

He may have his legal domicil in one place and yet spend a very large part of his time in another. But he cannot have more than one domicil. His words or declarations are not the only evidence of his intent; and they are much stronger evidence when against his interest than when they are in his favor. Thus, one goes from Boston to England. If he goes intending not merely to travel, but to change his residence permanently, and not to return to this country unless as a visitor, he changes his domicil from the day that he leaves this country. Let us suppose, however, that he is still regarded by the assessors as residing in Boston, although travelling abroad, and is heavily taxed accordingly. If he can prove that he has abandoned his original home, he escapes from the tax which he must otherwise pay. Now, his declarations that he has no longer a home here, and that his residence is permanently fixed in England, and the like, would be very far from conclusive in his favor, and could indeed be hardly received as evidence at all, unless they were confirmed by facts and circumstances. But if it could be shown that he had constantly asserted that he was still an American, that he had no other permanent residence, no home but that which he had temporarily left as a traveller, such declarations would be almost conclusive against him. In general, such a question would be determined by all the words and acts, the arrangement of property at home, the length and the character of the residence abroad, and all the acts and circumstances which would indicate the actual intention and understanding of the party.

Two cases have occurred in the city of Boston which illustrate this question. In one, a citizen of Boston, who had been at school in the city of Edinburgh when a boy, and formed a predilection for that place as a residence, and had expressed a determination to reside there if he ever should have the means of so doing, removed with his family to that city in 1836, declaring, at the time of his departure, that he intended to reside abroad, and that, if he should return to the United States, he should not live in Boston. He resided in Edinburgh and vicinity, as a housekeeper, taking a lease of an estate for a term of years, and endeavored to engage an American to enter his family for two years as instructor of his children. Before he left Boston he made a contract for the sale of his mansion-house and furniture there, but shortly afterward procured said contract to be annulled (assigning as his reason therefor, that, in case of his death in Europe, his wife might wish to return to Boston), and let his house and furniture to a tenant. Held, that he had changed his domicil, and was not liable to taxation as an inhabitant of Boston in 1837. In the other case, a native inhabitant of Boston, intending to reside in France with his family, departed for that country in June, 1836, and was followed by his family about three months afterwards. His dwelling-house and furniture were leased for a year, and he hired a house for a year in Paris. At the time of his departure he intended to return and resume his residence in Boston, but had not fixed on any time for his return. He returned in about sixteen months, and his family in about nine months afterwards. Held, that he continued to be an inhabitant of Boston, and that he was rightly taxed there during his absence, for his person and personal property. This last case was distinguished from the former by the different intent of the parties upon their departure from home.

It is a general rule, that, if one has a domicil, he retains it until he acquires another. Thus, if a seaman, without family or property, sails from the place of his nativity, which may be considered his domicil of origin, although he may return only at long intervals, or even be absent for many years, yet, if he does not, by some actual residence or other means, acquire a domicil elsewhere, he retains his domicil of origin.

It seems to be agreed that one may dwell for a considerable time, and even regularly during a large part of the year, in one place, or even in one State, and yet have his domicil in another.

A woman marrying takes her husband's domicil, and changes it with him. A minor child has the domicil of his father, or of his mother if she survives his father; and the surviving parent, with whom a child lives, by changing his or her own domicil in good faith, changes that of the child. And even a guardian has the same power.

CHAPTER XXV.

THE LAW OF SHIPPING.

SECTION I.

THE OWNERSHIP AND TRANSFER OF SHIPS.

THE Law of Shipping may be considered under three divisions. First, as to ownership and transfer of ships. Second, as to the employment of ships as carriers of goods, or of passengers, or both. Third, as to the navigation of ships. I begin with the first topic.

Ships are personal property; or, in other words, a ship is a chattel; and yet its ownership and transfer are regulated in this country by rules quite analogous to those which apply to real property.

The Constitution of the United States gives to Congress the power to enact laws for the regulation of commerce. In execution of this power, acts were passed in 1792, and immediately after, which followed substantially the Registry and Navigation Laws of England, some of which had been in force about a century and a half. The English laws were intended to secure English commerce to English men and English ships; and it was supposed that the commercial prosperity of England was in a great measure due to them. The laws on this subject now in force will be found in the Revised Statutes of the United States, § 4,131 *et seq.*

To secure the evidence of the American character of a vessel, the statutes provide for an exact system of registration in the custom-house. There is no *requirement* of registration. The law does not say that a ship shall or must be registered, but that certain ships or vessels may be; and, if they are registered, they shall have certain privileges. And the disadvantage of being without registry operates as effectually to make registration universal, as a positive requirement with a heavy penalty could do.

The ships which may be registered are those already registered December 31st, 1792, under the act of September, 1789; those built within the United States, and owned wholly by citizens thereof; and those captured and condemned as prizes, or adjudged forfeited by violation of law, if at the time of registry they are owned wholly by citizens of this country. No ship can be registered if an owner or part-owner usually resides abroad, although he is a citizen, unless he is a consul of the United States, or agent for, and a partner in a mercantile house established and doing business here; nor if the master be not a citizen of the United States; nor if the owner or part-owner be a naturalized citizen, and reside in the country whence he came more than a year, or in any foreign country more than two years, unless he be consul or public agent of the United States. But a ship which has lost the benefits of registry by the non-residence of an owner, in such a case may be registered anew if she become the property of a resident citizen, by *bonâ fide* purchase; nor can a ship be registered which has been, at any time, the property of an alien, unless she becomes the property of the original owner or his representative.

Sometimes Congress, by special acts, permits the registration, as an American ship, of a vessel which has become, by purchase, American property. If a registered American ship be sold or transferred, in whole or in part, to an alien, the certificate of registry must be delivered up, or the vessel i forfeited; but if, in case of a sale in part, it can be shown tha any owner of a part not so sold was ignorant of the sale, his share shall not be subject to such forfeiture. As soon as a registered vessel arrives from a foreign port, her documents must be deposited with the collector of the port of arrival, and the owner, or, if he does not reside within the district, the master, must make oath that the register contains the names of all persons who are at that time owners of the ship, and at the same time report any transfer of the ship, or of any part, that has been made within his knowledge since the registry; and also declare that no foreigner has any interest in the ship. If a register be issued fraudulently, or with the knowledge of the owners, for a ship not entitled to one, the register is not only void, but the ship is forfeited. If a new register is issued, the old one must be given up; but where there is a sale by process of law, and the former owners withhold the register, the Secretary of the Treasury may authorize the collector to issue a new one. If a ship be transferred while at sea, or abroad, the old register must be given up, and all the requirements of law, as to registry, etc., must be complied with, within three days after her arrival at the home port.

Important exclusive privileges have been granted to registered vessels of the United States. Some of these, relating to foreign commerce, have since been withdrawn, but Rev. Stat. of U. S., § 4347 still provides that no merchandise shall be carried from port to port in the United States, by any foreign vessel, unless it formed a part of its original cargo.

A ship that is of twenty tons burden, to be employed in the fisheries, or in the coasting trade, need not be registered, but must be enrolled and licensed accordingly. If under twenty tons burden, she need only be licensed. If licensed for the fisheries, she may visit and return from foreign ports, having stated her intention of doing so, and being permitted by the collector. And if registered, she may engage in the coasting trade or fishery, and if licensed and enrolled, she may become a registered ship, subject to the regulations provided for such cases.

A ship that is neither registered nor licensed and enrolled can sail on no voyage with the privilege or protection of a national character or national papers. If she engages in foreign trade, or the coasting trade, or fisheries, she is liable to forfeiture; and if she have foreign goods on board, must at all events pay the tonnage duties leviable on foreign ships. In these days, no ship engaged in honest business, and belonging to a civilized people, is met with on the ocean, without having the regular papers which attest her nationality, unless she has lost them by some accident.

SECTION II.

TRANSFER OF PROPERTY IN A SHIP.

Revised Statutes, § 4170, provides, that, "in every case of sale or transfer, there shall be some instrument in writing, in the nature of a bill of sale, which shall recite at length the said certificate; otherwise the said ship or vessel shall be incapable of being registered anew." It follows, therefore, that a merely oral transfer, although for valuable consideration, and followed by possession, gives the transferee no right to claim a new register setting forth his ownership. But this is all. There is nothing in this statute to prevent the property from passing to and vesting in such transferee. It is, however, unquestionably a principle of the maritime law generally, that property in a ship should pass by a written instrument. And as this principle seems to be adopted by the statute, the courts have sometimes almost denied the validity of a merely parol transfer. The weight of authority and of reason is, however, undoubtedly in favor of the conclusion stated by Judge Story, that "the registry acts have not, in any degree, changed the common law as to the manner of transferring this species of property." It would follow, therefore, that such transfer would be valid, and would pass the property.

Rev. Stat., § 4192, provides "that no bill of sale, mortgage, hypothecation, or conveyance of any vessel or part of any vessel of the United States, shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof: unless such bill of sale, mortgage, hypothecation, or conveyance be recorded in the office of the collector of the customs where such vessel is registered or enrolled." Then follows an exception in favor of liens by bottomry, and in subsequent sections are provisions for recording by the collector, and giving certificates, etc.

This statute has no effect, that I perceive, upon oral transfers, excepting that, as they cannot be recorded, their operation is limited to the grantors and those who have actual notice. Where the transfer is by bill of sale, the record of this, under the late statute, is notice to all the world. But in most of our States there are already provisions for the record of mortgages of personal property, and the question arises how these are affected by this statute of the United States. I should say that it controlled and superseded the State statute, so as to make that unnecessary and ineffectual; and therefore a record in the custom-house only would be sufficient, and a record under the State Law would affect only those who had actual knowledge of it.

As a ship is a chattel, a transfer of it should be accompanied by a delivery of possession. Actual delivery is sometimes impossible where a ship is at sea; and the statute of 1850 makes the record of the transfer equivalent to change of possession. If there be no record, possession should be taken as soon as possible; and prudence would still require the same course in case of transfer by writing and record.

By the word "ship," and still more by the phrase "ship and her appurtenances," or "apparel," or "furniture," everything would pass which was distinctly connected with the ship, and is on board of her, and fastened to her if that be usual, and needed for her navigation or for her safety. Kentledge, a valuable kind of permanent ballast, has been held to pass with the ship; so have a rudder and cordage prepared for a vessel, but not yet attached to her, and not quite finished; and so would a boat, anchors, etc., generally But the answer to the question, What is part of the ship? must always depend somewhat upon the words of the instrument, and upon the circumstances of the case and the intention of the parties.

A sale by the decree of any regular court of admiralty, with due notice to all parties, and with proper precautions to protect the interests of all, and to guard against fraud or precipitancy, would undoubtedly be acknowledged by courts of admiralty of every other nation as transferring the property effectually.

SECTION III.

PART-OWNERS.

Two or more persons may become part-owners of a ship, in either of three ways. They may build it together, or join in purchasing it, or each may purchase his share independently of the others. In either case their rights and obligations are the same.

If the register, or the instrument of transfer, or other equivalent evidence, do not designate specific and unequal proportions, they will be presumed to own the ship in equal shares.

Part-owners are not necessarily or usually partners. But a ship, or any part of a ship, may constitute a part of the stock or capital of a copartnership; and then it will be governed, in all respects, by the law of partnership.

A part-owner may at any time sell his share to whom he will. But he cannot sell the share of any other part-owner, without his authority. If he dies, his share goes to his representatives, and not to the surviving part-owners.

A majority of the part-owners may, generally, manage and direct the employment of the property at their discretion. But a court of admiralty will interfere and do justice between them, and prevent either of the part-owners from inflicting injury upon the others.

One part-owner may, in the absence of the rest, and without prohibition from them, manage the ship, as for himself and for them. And the contracts he enters into, in relation to the employment or preservation of the ship, bind all the part-owners in favor of an innocent third party.

Formerly all the part-owners were liable, but by act of Congress of June 26, 1884, it is now provided "that the individual liability of a ship-owner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. Provided that this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship owners."

If it can be clearly shown, however, that especial credit was given, and intended to be given, to one part-owner personally, to the exclusion of the others, then the others cannot be holden. If the goods were charged to "ship" so and so, or to "ship and owners," this would tend strongly to show that it was intended to supply the goods on the credit of all the owners. If charged to some one owner alone, this would not absolutely prove that credit was intentionally given to him exclusively. But it would raise a presumption to that effect which could be rebutted only by showing that no other owner was known; or by some other evidence which disproved the intention of discharging the other part-owners.

So, if the note, negotiable or otherwise, of one part-owner were taken in payment, if the promisor refused to pay, the others would be liable, unless they could show a distinct bargain by which they were exonerated.

Commonly, the "ship's husband," as the agent of all the owners for the management of the ship has long been called, is one of the part-owners. He may be appointed in writing or otherwise. His duties are, in general, to provide for the complete equipment and repair of the ship, and take care of her while in port; to see that she is furnished with all regular and proper papers; to make proper contracts for freight or passage, and collect the receipts and make the disbursements proper on these accounts. For these things he has all the necessary powers. But he cannot, without special power, insure for the rest, nor buy a cargo for them, nor borrow money, nor give up their lien on the cargo for the freight, nor delegate his authority.

Where he acts within his powers, a ship's husband binds all his principals, that is, all the part-owners. But a third party may deal with him on his personal credit alone; and if the part-owners, believing this, and authorized to believe it by any acts or words of the third party, settle their accounts with the ship's husband accordingly, this third party cannot now establish a claim against them to their detriment. If a ship's husband is not a part-owner, all the part-owners are liable to him, each for the whole amount. If he is a part-owner, each of the others is liable to him for his share of the expense incurred. The "ship's husband" is called in the Statutes of the United States the "managing owner."

SECTION IV.

THE LIABILITY OF MORTGAGEES.

A MORTGAGEE of a ship, who is in possession, is, in general, liable for supplies, repairs, etc., in the same way as an owner. But if he has not taken possession, he is not liable for supplies or repairs merely on the ground that his security is strengthened by whatever preserves or increases the value of the vessel. Nor can he be made liable, except by some act or words of his own, which show that credit was *properly* given to him, or that he has come under a valid engagement to assume this responsibility.

SECTION V.

THE CONTRACT OF BOTTOMRY.

BY this contract, a ship is hypothecated (which means pledged) as security for money borrowed. The form of this contract varies in different places, and, indeed, in the same place. Its essentials are:—First, that the ship itself is bound for the payment of the money. Second, that the money is to be repaid only in case the ship performs a certain voyage, and arrives at its destined termination in safety; or, as it is sometimes provided in modern bottomries, in case that the ship is in safety on a certain day; therefore, if the ship is lost before the termination of the voyage or the expiration of the period, no part of the money is due, or, as is sometimes said, the whole debt is paid by the loss. As the lender thus consents that the repayment of the money shall depend upon the safety of the ship, he has a legal right to charge "marine interest," which means as much more than legal interest as will serve to cover his risk.

The lender may require, and the borrower pay, this marine interest, which may be much more than lawful interest, on a bottomry bond, without usury.

If the interest be not expressed in the contract, it will generally be presumed to be meant and included in the sum named as principal.

If, by the contract, the lender takes more than legal interest and yet the money is to be paid to him whether the ship be lost or not, this is not a contract of bottomry, and it is subject to all the consequences of usury. But the lender may take security for his debt and marine interest, additional to the ship itself, provided the security is given, like the ship itself, to make the payment certain when it becomes due by the safety of the ship, but is wholly avoided if the ship be lost; for then the lender takes the risk of losing the whole, principal and interest, by the loss of the ship, and may therefore charge more than simple interest.

The most common contracts of bottomry are those entered into by the master in a foreign port, where money is needed and cannot otherwise be obtained. Therefore the security goes with the ship, and the debt may be enforced, as soon as it is payable, against the ship, wherever the ship may be. But in this country, these contracts are frequently made by the owner himself, in the home port. And sometimes they are nothing else than contrivances to get more than legal interest. Thus, if A lends to B $20,000 on B's ship for one year, at fifteen per cent. interest, conditioned that, if the ship be lost, the money shall not be paid, and the lender insures the ship for three per cent., he gets twelve per cent. interest, which may be much more than the legal interest, and yet incurs no risk. If such a contract were obviously and certainly merely colorable, and only a pretence for getting usurious interest, the courts would probably set it aside; but it might be difficult to show this.

If the money is payable at the end of a certain voyage, and the owner or his servant, the master of the ship, terminate the voyage sooner,—either honestly, from a change in their plan, or dishonestly, by intentional loss or wreck,—the money becomes at once due.

A bottomry bond made abroad would override all other liens or engagements, except the claim for seamen's wages, and the lien of material men for repairs, and supplies indispensable to the safety of the vessel. The reason is, that a bottomry bond is supposed to be made from necessity, and to have provided the only means by which the ship could be brought home. For the same reason, a later bond is sustained as against an earlier and the last against all before it.

The lien of bottomry depends in no degree on possession, for the ship may go all over the world with the bottomry security attached to her; but the lender ought to collect the sum due, and so discharge the bond as soon as he conveniently can; and therefore an unreasonable delay in enforcing it will destroy the lien; and any connivance by the lender at any fraud on the part of the master avoids the bond entirely.

SECTION VI.

THE EMPLOYMENT OF A SHIP BY THE OWNER.

An owner of a ship may employ it in carrying his own goods, or those of another. He may carry the goods of others, while he himself retains the possession and direction of the ship; or he may lease his ship to others, to carry their goods. In the first case, he carries the goods of others *on freight*; in the second, he lets his ship *by charter-party*. We shall consider first the carriage of goods on freight.

He may load his ship as far as he can with his own goods, and then take the goods of others to fill the vacant space; or he may put up his ship as "a general ship," to go from one stated port to another, and to carry the goods of all who offer.

It may be remarked, that the word "freight" is used in different ways; sometimes to designate the goods or cargo that is carried; sometimes to denote the money which the shipper of the goods pays to the owner of the ship, for their transportation. Not unfrequently, when the word is used in this latter sense, the word "money" is added, and the phrase "freight-money" leaves no question as to what is meant. Sometimes a ship-owner who lets the whole burden of his ship to another is said to carry the shipper's goods on freight. But the most common meaning of the word, especially in law proceedings, is the money earned by a ship not chartered for the transportation of the goods; and in this sense we shall use it.

Nearly the whole law of freight grows out of the ancient and universal principle that the ship and the cargo have reciprocal duties or obligations towards each other, and are reciprocally pledged to each other for the performance of these duties. In other words, not only is the owner of the ship bound to the owner of the cargo, as soon as he receives it, to lade it properly on board, take care of it while on board, carry it in safety (so far as the seaworthiness of the ship is concerned) to its destined port, and there deliver it, all in a proper way, but the ship itself is bound to the discharge of these duties. That is to say, if, by reason of a failure in any of these particulars, the shipper of the goods is damnified, he may look to the ship-owner for indemnity; but he is not obliged to do so, because he may proceed by proper process against the ship itself. This lien, like that of bottomry, is not dependent upon possession, but will be lost by delay, especially if the vessel passes into the hands of a purchaser for value without notice. On the other hand, if the ship discharges all its duties, the owner may look to the shipper for the payment of his freight; but is not obliged to do so, because he may keep his hold upon the goods, and refuse to deliver them until the freight is paid.

The party who sends the goods may or may not be the owner of them. And he may send them either to one who is the owner; for whom the sender bought them, or to one who is only the agent of the owner. In either of these cases, the sender is called the consignor of the goods, and the party to whom they are sent is called the consignee. The sending them is called the consigning or the consignment of them; but it is quite common to hear the goods themselves called the consignment.

The rights and obligations of the ship-owner and the shipper are stated generally in an instrument of which the origin is lost in its antiquity, and which is now in universal use among commercial nations, with little substantial variety of form. It is called the Bill of Lading. It should contain the names of the consignor, of the consignee of the vessel, of the master, of the place of departure, and of the place of destination; also the price of the freight, with primage and other charges, if any there be, and either in the body of the bill or in the margin, the marks and numbers of the things shipped, with sufficient precision to designate and identify them.

It should be signed by the master of the ship, who, by the strict maritime law, has no authority to sign a bill of lading until the goods are actually on board. There is some relaxation of this rule in practice; but it should be avoided.

Usually one copy is retained by the master, and three copies are given to the shipper; one of them he usually retains, another he sends to the consignee with the goods, and the other he sends to the consignee by some other conveyance.

The delivery of the goods promised in the bill is to the consignee, or his assigns; and the consignee may designate his assigns by writing on the back of the bill, "Deliver the within-named goods to A B," and signing this order; or the consignee may indorse the bill with his name only in blank, and any one who acquires an honest title to the goods and to the bill may write over the signature an order of delivery to himself. The consignee has this power, if such be the usage, even if the word "assigns" be omitted. Such indorsement not only gives the indorsee a right to demand the goods, but makes him the owner of the goods.

As the bill of lading is evidence against the ship-owner as to the reception of the goods, and their quantity and quality, it is common to say "contents unknown," or "said to contain," etc. But without any words of this kind, the bill of lading is not conclusive upon the ship-owner in favor of the shipper, because he may show that its statements were erroneous through fraud or mistake. But the ship-owner, or master, is bound much more strongly by the words of the bill of lading, in favor of a third party, who has bought the goods for value and in good faith, on the credit of the bill of lading. In a case which occurred in New York, the court said, that, as between the shipper of the goods and the owner of the vessel, a bill of lading may be explained or corrected as far as it is a receipt; that is, as to the quantity of the goods shipped, and the like; but as between the owner of the vessel and an assignee of the bill, for a valuable consideration, paid on the strength of the bill of lading, it may not be explained or corrected; because the master, by signing the bill, authorizes the purchaser to believe the goods are what the bill says they are.

The law-merchant gives to the ship, as we have seen, a lien on the goods for the freight. The master cannot demand the freight without a tender of the goods at the proper time, in the proper way, to the proper person, and in a proper condition; but then the consignee is not entitled to the goods without paying freight. The law gives this lien, whether it be expressed or not. But it may be expressly waived. The bill of lading, or other evidence, may show the agreement of the parties that the goods should be delivered first, and the freight not be payable until a certain time afterwards; and such an agreement is in general a waiver of the lien.

Nevertheless, if it seemed that the ship-owner did not intend to give up his security on the goods, a court of admiralty would so construe such an agreement as to give the consignee possession of the goods, for a temporary purpose, as to ascertain their condition, or, possibly, that he might offer them in the market, and by an agreement to sell raise the means of paying the freight; and yet would preserve for the master his security upon the goods for a reasonable time, unless, in the meantime, they should actually become, by sale, the property of a *bonâ fide* purchaser.

The contract of affreightment is entire; therefore no freight is earned unless the whole is earned, by carrying the goods quite to the port of destination. If by wreck, or other cause, the transportation is incomplete, no absolute right of freight goes out of it. We say no absolute right, because a conditional right of freight does exist. To understand this we must remember, that, as soon as the ship receives the goods, it, on the one hand, comes under the obligation of carrying them to their destination, and on the other, at the same time or on breaking ground and beginning the voyage, acquires the right of so carrying them. Therefore, if a wreck or other interruption intervenes, the ship-owner has the right of trans-shipping them, and sending them forward in the original ship or another ship, to the place of their original destination. When they arrive there, he may claim the whole freight originally agreed on ; but if forwarded in the original ship, he can claim no more ; for then the extra cost of forwarding the goods is his loss. If the master or owner of the ship forwards them in another ship from necessity, and at an increased cost, the shipper must pay this increased cost.

The ship-owner not only may, but must, send forward the goods, at his own cost, if this can be done by means reasonably within his reach. He is not, however, answerable for any delay thus occurring, or for any damage from this delay. The shipper himself, by his agent, may always reclaim all his goods, at any intermediate port or place, on tendering all his freight ; because the master's right of sending them forward is merely to earn his full freight. If, therefore, the goods are damaged and need care, and the master can send them forward at some time within reasonable limits, and insists upon his right to do so, the shipper can obtain possession of his goods only by paying full freight. If, however, the master tenders the goods there to the shipper, and the shipper there receives them, this is held to sever or divide the contract by agreement, and now what is called a freight *pro rata itineris*, or for that part of the voyage which is performed, is due. This is quite a common transaction.

Difficult questions sometimes arise as to what is a reception of the goods by their owner. The rights of the master and of the shipper are apparently opposed to each other, and neither must be pressed too far. The master must not pretend to hold the goods for forwarding, to the detriment of the goods or their value, when he cannot forward them, but merely uses this pretence to compel a payment of full freight. And the shipper must not refuse to receive the goods, when the master can do no more with them, and offers their delivery in good faith.

If freight for a part of the voyage is payable, the question arises by what rule of proportion shall it be measured. One is purely geographical, and was formerly much used ; that is, the whole freight would pay for so many miles, and the freight for a part must pay for so many less. Another is purely commercial. The whole freight being a certain sum for the whole distance, what will it cost to bring the goods to the place where they are received, and how much to take them thence to their original destination. Let the original freight be divided into two parts proportional to these, and the first part is the freight for the part of the voyage through which they were carried, or, as it is called, the freight *pro rata*, and is to be paid by the shipper who receives the goods. Neither of these, nor indeed any other fixed and precise rule, is generally adopted in this country. But both courts and merchants seek, by combining the two, to ascertain what proportion of the increase of value expected from the intended transportation has been actually conferred upon the goods by actual partial transportation, and this is to be taken as the freight that is due *pro rata itineris*.

If the bill of lading requires delivery to the consignee or his assigns, "he or they paying freight,"—which is usual,—and the master delivers the goods without receiving freight, which the consignee fails to pay, the master or owner cannot in the absence of express contract fall back on the consignor and make him liable, unless he can show that the consignor actually owned the goods, or by his words or acts made himself responsible therefor, in which case the bill of lading, in this respect, is nothing more than an order by a principal upon an agent to pay money due from the principal.

Under the usual bill of lading the goods are to be delivered to the consignee or his assigns on the payment of freight. If goods are accepted under this bill of lading, the party receiving them, whether the consignee or his assignee, becomes liable for the freight. If the master delivers goods to any one, saying that he shall look to him for the freight, he may demand the freight of him unless that person had the absolute right to the goods without payment of freight; which must be very seldom the case. If the consignee is not liable for the freight, his indorsement of the bill of lading does not make him so. And if the consignee is liable, and the goods are received by any one only as agent of the consignor, this agent does not thereby become liable.

If freight be paid in advance, and not subsequently earned, it must be repaid, unless it can be shown that the owner took a less sum for ready cash than he would otherwise have had, and for this or some other equivalent reason the money paid was as a final settlement, and was to be retained by the owner at all events.

If a consignee pay more than he should, he may recover it back, if paid through ignorance or mistake of fact; but not if, with full knowledge of all the facts, he was ignorant or mistaken as to the law.

If one sells his ship after a voyage is commenced, he alone can claim the freight of the shipper of goods, although by the contract of sale the seller is to pay it over to the purchaser. A mortgagee of a ship who has not taken possession, has not, in general, any right to the freight, unless this is specially agreed. Neither has a lender on a bottomry bond.

No freight, of course, can be earned by an illegal voyage, as the law will not enforce any illegal contract, or sanction any illegal conduct.

The goods are to be delivered, by the bill of lading, in good condition, "excepting the dangers of the seas," and such other risks or perils as may be expressed. If the goods are damaged to any extent by any of these perils, and yet can be and are delivered *in specie* (that is, if the goods are actually delivered although hurt or spoilt, as corn or hides although rotten, flour although wet, fish although spoilt), the freight is payable.

The shipper or consignee cannot abandon the goods for the freight, if they remain *in specie,* although they may be worthless; for damage caused by an excepted risk is his loss, and not the loss of the owner. If they are lost by a risk which the ship-owner does not except in the bill of lading, he is answerable for that loss, and it may be charged in settlement of freight.

If they are lost in substance, though not in form, that is, although the cases or vessels are preserved, as if sugar is washed out of boxes or hogsheads, or wine leaks out of casks, by reason of injury sustained from a peril of the sea, though the master may deliver the hogsheads or boxes or casks, this is not a delivery of the sugar or of the wine, and no freight is due.

If the goods are injured, or actually perish and disappear from internal defect or decay or change, that is, from causes inherent in the goods themselves, with no fault of the master, freight is due. But if it can be shown that the loss or injury might have been avoided by the use of proper precautionary measures, and that the usual and customary methods for this purpose have been neglected, the master or ship-owners may be held liable for the damage.

If they are lost from the fault of the ship-owner, the master, or crew, the ship-owner must make the loss good; but in this case may have, by way of offset or deduction, his freight, because the shipper is entitled to full indemnification, but not to make a profit out of this loss. If goods are delivered although damaged and deteriorated from faults for which the owner is responsible, as bad stowage, deviation, negligent navigation, or the like, freight is due; the amount of the damage being first deducted.

The rules in respect to passage-money are quite analogous to those which regulate the payment of freight. Usually, however, the passage-money is paid in advance. But it is not earned except by carrying the passenger, or *pro rata*, by carrying him only a part of the way with his consent. And if paid in advance, and not earned by the fault of the ship or owner, it can be recovered back.

SECTION VII.

CHARTER-PARTIES.

THE owner may let his ship to others, and the written instrument by which this is done is called by an ancient name, a Charter-Party. The form of this instrument varies considerably, because it must express the bargain between the parties, and this of course varies with circumstances and the pleasure of the parties. An agreement to make and receive a charter, though not itself equivalent to a charter, will, if the purposes of the proposed charter are carried into effect, be considered as evidence that such a charter was made and completed.

Generally, only the burden of the ship is let, the owner holding possession of her, finding and paying her master and crew and supplies and repairs, and navigating her as is agreed upon. Sometimes, however, the owner lets his ship as he might let a house, and the hirer takes possession, mans, navigates, supplies, and even repairs her.

In the latter case, bills of lading are not commonly given by the ship-owner to the hirer; but if the hirer takes the goods of other shippers, bills of lading are given by him to them; but in the former, which we have said is much more common, bills of lading are usually given by the ship-owner to the charterer (or hirer), as they are in the case of a general ship. They are then, however, little more than evidence of the delivery and receipt of the goods, for the charter-party is the controlling contract as to all the terms or provisions which it expresses. The master is not authorized to sign bills promising to carry and deliver the goods for less freight than has been stipulated for. And if he signs such bills, and goods are shipped by the charterer, neither the charterer nor any person shipping the goods with a knowledge of the charter-party, could defend on account of the bills of lading, against the owner's claims under the charter-party.

There is no particular form required for a charter-party. It should, however, designate particularly the ship, the voyage, the master, and the parties; should describe the ship generally, and particularly as to her tonnage or capacity; should designate especially what parts of the ship are let, and what parts, if any, are reserved to the owner, or to the master, to carry goods, or for the purpose of navigation; should describe the voyage, or the period of time for which the ship is hired, with proper particularity; should set forth the lay-days, the demurrage, the obligation upon either party, to man, navigate, supply, and repair the ship, and all other particulars of the bargain, for this is a written instrument of an important character, and cannot be *varied* by any external evidence. Finally, it should state, distinctly and precisely, how much is to be paid for the ship,—

whether by ton, and if so, whether by ton of measurement or ton of capacity of carriage, or in one gross sum for the whole burden,—and when the money is payable, and how; that is, in what currency or at what exchange, especially if it be payable abroad. The charter-party usually binds the ship and freight to the performance of the duties of the owner, and the cargo to the duties of the shipper. But the law-merchant would create this mutuality of obligation if it were not expressed.

If the hirer takes the whole vessel, he may put the goods of other shippers on board (unless prevented by express stipulation); but whether he fills the whole ship or not, he pays for the whole; and what he pays for so much of the ship as is empty is said to be paid for dead freight; and if the master brought back the cargo because it could not be disposed of, the owner of the cargo would pay freight for bringing it back, although the charter-party said nothing about a return cargo. The freight is calculated on the actual capacity of the ship, unless she is agreed to be of a specified tonnage. If either party is deceived or defrauded by any statement in the charter-party, he has, of course, his remedy against the other party.

If a charterer takes the goods of other shippers, payment by one of them to the master or ship-owner is a good defence against the claim of the charterer against him, for so much as the charterer was bound to pay the owner, but no more.

The voyage may be a double one; a voyage out, and then a voyage home; or a voyage to one port, and thence to another. The question sometimes arises, whether any freight is payable if the ship arrives in safety out, and delivers her cargo there, and is lost on her return with the cargo that represents the cargo out. Of course, the parties may make what bargain they please, and the law respects it; but in the absence of an agreement on this point, the courts would generally consider each voyage, at the termination of which goods are delivered, as a voyage by itself, earning its own freight.

As time has become of the utmost importance in commercial transactions, both parties to this contract should be punctual, and cause no unnecessary delay; and for such delay the party injured would have his remedy against the party in fault. The charter-party usually provides for so many "lay-days," and for so much "demurrage." Lay-days, or working-days, are so many days which the charterer is allowed, without paying for them, or paying only a small price, for loading or for unloading the vessel. These lay-days are counted from the arrival of the ship at her dock, wharf, or other place of discharge, and not from her arrival at her port of destination, unless otherwise agreed on by the parties; and the usage of the port is often adverted to, to determine the place and manner of loading. In the absence of any custom or bargain to the contrary, Sundays are computed in the calculation of lay-days at the port of discharge, but if the contract specifies "working lay-days," Sundays and holidays are excluded. If more time than the agreed lay-days is occupied, it must be paid for; and "demurrage" means what is thus paid. Usually, the charterer agrees to pay so much demurrage a day. If he agrees only to pay demurrage, without specifying the sum, or if so many working days are agreed on, and nothing more is said, it would, generally, be considered that the number of lay-days determined what was a reasonable and proper delay, and that for whatsoever was more than this the party in fault must pay a reasonable indemnity.

If time be occupied in the repairs of the ship, which become necessary without the fault of the ship-owner or master, or of the ship itself, that is, if they do not arise from her original unseaworthiness, the charterer pays during this time. The charterer or hirer must not abandon the vessel while he can keep her afloat, and suitably provided for the employment and destination for which he was hired; and the ship-owner must be ready to pay all expenses and damages necessarily incurred for the purpose. But the charterer will not be bound by the charter-party to wait for the repair, unless the vessel can be repaired within a reasonable time.

Many cases have arisen where the ship was delayed by different causes, and the question occurred, which party should pay for the time thus lost. I should say that no delay arising from the elements, as from ice, or tide, or tempest, or from any act of government, or from any real disability of the consignee which could not be imputed to his own act, or to his own wrongful neglect, would give rise to a claim on the charterer for demurrage.

Demurrage seems essentially due only for the fault or voluntary act of the charterer; but if he hires at so much on time, that is, by the day, week, or month, then, if the vessel be delayed by seizure, embargo, or capture, and the impediment is removed, and the ship completes her voyage, the charterer pays for the whole time. If she be condemned, or otherwise lost, this terminates the voyage and the contract.

The contract may be dissolved by the parties, by mutual consent, or against their consent by any circumstance which makes the fulfillment of the contract illegal; as, for example, by a declaration of war, on the part of the country to which the ship belongs, against that to which she was to go. So, either an embargo, or an act of non-intercourse, or a blockade of the port to which the ship was going, may either annul or suspend the contract of charter-party. And we should say they would be held to suspend only, if they were temporary in their terms, and did not require a delay which would be destructive of the purposes of the voyage.

In reference to all these points, it is to be understood, that if the parties know or expect the circumstance when they make their bargain, and provide for it, any bargain they choose to make in relation to it would be enforced, unless it required one or other of the parties to do something prohibited by the law of nations, or the law of the country in which the parties resided, and to whose tribunals they must resort.

SECTION VIII.

GENERAL AVERAGE.

WHICHEVER of the three great mercantile interests—ship, freight, or cargo—is voluntarily lost or damaged for the benefit of the others, if the others receive benefit therefrom, they must contribute ratably to the loss. That is to say, such a loss is *averaged* upon all the interests and property which derive advantage from it. The phrase "general average" is used, because a loss of a part is thus divided among all the other parts, and is sustained by all in equal proportion. This rule is ancient and universal. It would be held to apply to all our inland navigation, whether of river or lake, steam or canvas.

There are three essentials in general average without the concurrence of all of which there can be no claim for a loss. First, the sacrifice must be voluntary; second, it must be necessary; third, it must be successful. Or, in other words, there must be a common danger, a voluntary loss, and a saving of the imperilled property by that loss.

The loss must not only be voluntary, but, what is indeed implied in its being voluntary, it must be for the purpose and with the intention of saving something else. And this intention must be carried into effect; for only the interest or property which is actually saved can be called on to contribute for that which was lost.

The reason of what has been said must be distinctly understood, because the whole law of general average rests upon it. It is simply this: if any man's property be destroyed for the benefit of his neighbors, they who are helped by his loss ought to make up his loss. The law supposes that all who are interested in the ship or the cargo, or any part of either, agree together beforehand, that, if a sacrifice of a part can save the rest, that sacrifice shall be made, without stopping to ask who it is that suffers in the first place; and that afterwards, if the sacrifice be beneficial to any for whom it was made, such persons shall bear their share of it, by contributions to him whose property was purposely destroyed for their good. And their contributions shall be in proportion to the value of the property saved for them by the sacrifice.

Any loss which comes within this reason is an average loss; as ransom paid to a captor or pirate; not so, however, if he take what he will, and leave the ship and the rest; for this there is no contribution. So, cutting away bulwarks or the deck, to get at goods for jettison, is an average loss. As is also the cutting away of the masts and rigging, or throwing overboard a boat to relieve the ship, or the loss of a cable and anchor, or either, by cutting the cable to avoid an impending peril. So is a damage which, though not intended, is the direct effect and consequence of an act which was intended; as, where a mast is purposely cut away, and by reason of it water gets into the hold, and damages a cargo of corn, this damage is as much a general average as the loss of the mast.

But if a ship makes all sail in a violent gale to escape a lee shore, and so saves ship and cargo, but carries away her spars, etc.; or if an armed ship fights a pirate or enemy, or beats him off at great loss; the first is a common sea risk, the second a common war risk, and neither of them is a ground for average contribution.

It is not considered prudent to lade goods on deck, because they are not only more liable to loss there, but hamper the vessel, and perhaps make her top-heavy, and increase the common danger for the whole ship and cargo. Therefore, by the general rule, if goods on deck are *jettisoned* (which old mercantile word means cast overboard), they are not to be contributed for. But there are some voyages on which there is a known and established usage to carry goods of a certain kind on deck. This justifies the carrying them there, and then the jettison of them would entitle the owner to contribution.

The repairs of a ship are for the benefit of the ship itself. But if a ship be in a damaged condition, at a port where she cannot be permanently repaired, and receive there a temporary repair, which enables her to proceed to another port where she may have a thorough repair, and thereby the voyage is saved, the cost of all of the first repair which was of no further use than to make the permanent repair possible, is to be contributed for by ship, freight, and cargo, because all these were saved by it.

If a ship put into a port for necessary repair, and receive it, and the voyage is by reason thereof successfully prosecuted, the wages and provisions of the crew, from the time of putting away for the port, the expense of loading and unloading, and every other necessary expense arising from this need of repair, are an average.

As to the expenses, wages, etc., during a capture, or a detention by embargo, the claim for contribution is limited to those expenses which are necessarily and successfully incurred in saving or liberating the property.

The loss or sacrifice must be necessary or justified by a reasonable probability of its necessity and utility. In former times the law guarded with much care against wanton and unnecessary loss by requiring that the master should formally consult his officers and crew, and obtain their consent before making a jettison. But this rule has passed away, and the practice is almost unknown; and it has been held that where a consultation is had this merely proves that the jettison was deliberately made, but does not prove the necessity of it.

An "Adjustment of Average" means an account stated, which exhibits accurately all the losses to be contributed for, and all the property or interests bound to contribute, and all the persons entitled to receive contribution, and the amounts they should each receive, and all persons bound to pay contribution, and the amounts they should each pay.

It is the master's duty to have an average adjustment made at the first port of delivery at which he arrives. And an adjustment made there, especially if this be a foreign port, is generally held to be conclusive upon all parties. For the purpose of this rule, our States are foreign to each other; as they are indeed for most purposes under the Law of Admiralty, or the Law of Shipping. And we should state the rule to be that an adjustment, when properly made, according to the law of the port where it is made, is binding everywhere. But a foreign adjustment might doubtless be set aside or corrected, for fraud or gross error.

The master has the right of refusing delivery of the goods, until the contribution due from them on general average is paid to him. That is, he cannot hold the whole cargo, if it belong to different consignees, until the whole average is paid; but he may hold all that belongs to each consignee, until all that is due from that consignee is paid. And the master may retain public property belonging to the United States until the average contribution due upon it has been paid.

As the purpose of average and contribution is to divide the loss proportionably over all the property saved by it, the whole amount which any one loses is not made up to him, but only so much as will make his loss the same percentage as every other party suffers. Thus, if there be four shippers, and each has on board $5,000, and the ship is worth $15,000, and the freight $5,000, and all the goods of one shipper are thrown over, and everything else saved; now the whole contributing interest is $40,000, and the loss, which is $5,000, is one-eighth of this contributory interest. The shipper whose goods are jettisoned therefore loses one-eighth of his goods, and the remaining seven-eighths are made up to him, by each owner of property saved giving up one-eighth.

There are usually in every commercial place persons whose business it is to make up Adjustments. As the losses usually consist of many items, some of which are general average, and some rest on the different interests on which they fell, and as the contributory interests must all be enumerated, and the value of each ascertained according to the general principles of law, and then the average struck on all these items, it is obvious that this must be a calculation requiring great care and skill; and as the adjustment affects materially persons who may not be present, nor specially represented,—for all these reasons only those who are known to be competent to the work should be employed to make this adjustment. With us this work is generally done by insurance brokers.

SECTION IX.

SALVAGE.

IN the Law of Shipping and the usage of merchants, the word "salvage" has two quite different meanings. If a ship or cargo meets with disaster, and the larger part is destroyed or lost, and a part be saved, that which is saved is called the "salvage." Thus, if a ship be wrecked, and sold where she lies because she cannot be got off, her materials, wood and metal, her spars, sails, cordage, boats, and everything else about her which has any value, constitute the "salvage." And all of this, or the proceeds of it if it be sold by the master, belong to the owner or to the insurer, accordingly as circumstances may indicate; and this question will be considered in the chapter on the Law of Insurance.

Besides this, which is the primary meaning of the word, salvage has quite another signification. By an ancient and universal law, maritime property which has sustained maritime disaster, and is in danger of perishing, may be saved by any person who can save it, whether they are or are not requested to do so by the owner or his agent. And the persons so saving it acquire a right to compensation, and a lien or claim on the property saved for compensation. The persons saving the property are called "salvors;" the amount paid to them is paid for saving the property, or, as it was called, for the "salvage," meaning at first by this word the act of saving it; but the habit of paying so much for "salvage" led to understanding by "salvage" the money paid. Then it was said, the money was paid *as* salvage. This is now the more common use of the word. Thus a party bringing a saved vessel in demands "salvage," and estimates the salvage as so much; and the owners are said to lose so much by salvage, or so much money is charged to salvage, and insurers are said to be liable for salvage, meaning in all these and similar cases the amount paid for saving, or for the act of salvage.

This law is not only applicable to all maritime property, but is confined to that; and is nearly unknown in reference to property saved from destruction on land.

Because this principle is wholly and exclusively maritime, no court but that of Admiralty acknowledges and enforces it. The way in which it is enforced is this. Salvors have a lien on the property saved for their compensation; that is, they have possession of it, and have a right to keep possession of it until their claim be satisfied. For this purpose they bring the ship or goods into the nearest port, and then make their claim of the owner or his agent, if they can find him, and he is within reach. If he cannot be found, or if he refuses what they think proper to demand, they employ counsel who are acquainted with the practice in Admiralty courts, who present to the court in the district where the property is a *libel,* as it is called in Admiralty law, setting forth the facts, and the demand for salvage. Thereupon the court takes possession of the property, and orders notice to the owners, if possible. The owners thereupon appear, and either resist all the demand for salvage, on the ground that no services were performed which entitled the party to salvage, or, admitting the service, they go to trial to determine whether any salvage, and, if so, how much, shall be paid. On this question, evidence and argument are heard, and the court then issues such decree as the case seems to require.

Although services were rendered to the ship or cargo, or both, it does not follow that they were salvage services in the legal sense of the word. For certainly every person who helps another at sea does not thereby acquire a right to take possession of the property in reference to which his assistance was given, and carry it into port. To give this right, the property, whether ship or cargo, must have been in the proper and rational sense of the term *saved;* that is, there must have been actual disaster and impending danger of destruction ; and from this danger the property must have been rescued by the exertions of the salvors, either alone, or working together with the original crew.

It is to be noticed, however, that neither the master nor officers nor sailors of the ship that is saved can be salvors, or entitled to salvage. The policy of the law-merchant forbids the holding out such a reward for merely doing their duty. It considers that sailors might be induced to let the vessel get into danger, if they could expect a special reward for getting her out of it. They are already bound by law to do all they possibly can do to save the ship and cargo under all circumstances. But courts of admiralty have sometimes allowed gratuities to seamen for extraordinary exertions and very meritorious conduct. A passenger may be a salvor of the ship he sails in, because he has no especial duty in regard to it.

If the Court of Admiralty find it to be a case for salvage, there are no positive and certain rules which determine how much shall be given, or in what proportions, to the different salvors. In every case the court are governed by the circumstances of that case ; and even if a ship or cargo be entirely abandoned at sea, or, in maritime phrase, *derelict*, those who find it and take possession of it, and bring it in, take according to their merits, and not one-half, as used to be the rule. More than one-half is very seldom given; but this has been done in a few extraordinary cases.

If the property is not entirely derelict or deserted, and all hope of recovering it by the original crew given up, then less than half is usually given by way of salvage. How much less depends on the circumstances. It may be very little, or nearly half. The court will inquire how much time was lost by the salvors, how much labor the saving of the property required, and, most of all, how much exposure the salvors underwent, or how much danger they incurred. For it is an established rule, that in addition to a fair compensation for time, labor, and loss of insurance (for which see the chapter on Insurance), the court will give a further sum by way of reward, and for the purpose of encouraging others to make similar exertions and incur similar perils to save valuable property. And, in this point of view, all necessary exposure and danger are considered as entitled to liberal reward.

If the court have not restored the property to its owners on their giving bonds with sureties to pay the salvage and costs, they order the property sold; and they may do either of these things at any period of the proceedings. At the close, they decree the whole amount of salvage, and also direct particularly its distribution.

A large part, usually about one-fourth, of the whole salvage, is allowed to the owners of the saving ship or ships; another large part to her master, less parts to the officers, in proportion to their rank, and the residue is divided among the crew, with such discrimination between one and another as greater or less exertions or merit require.

The trial is had, and the whole decree and this distribution of the salvage made, by the court alone, without a jury. But the statute of the United States, which gives our courts o Admiralty (which are exclusively United States courts, no State court having any Admiralty power) jurisdiction in Admiralty over our inland lakes and rivers, provides that disputed facts shall be tried by a jury, in most cases, at the request of either party.

SECTION X.

THE NAVIGATION OF THE SHIP.

1. OF THE POWERS AND DUTIES OF THE MASTER.—The master has the whole care and the supreme command of his vessel, and his duties are co-equal with his authority. He must see to everything that respects her condition; including her repair, supply, loading, navigation, and unloading. He is principally the agent of the owner; but is, to a certain extent, the agent of the shipper, and of the insurer, and of all who are interested in the property under his charge.

Much of his authority as agent of the owner springs from necessity. He may even sell the ship in a case of extreme necessity; so he may make a bottomry bond which shall pledge her for a debt; so he may charter her for a voyage or a term of time; so he may raise money for repairs, or incur a debt therefor, and make his owners liable. All these, however, he can do only from necessity. If the owner be present, in person or by his agent, or is within easy access, or can be consulted, by telegraph or otherwise, without a loss of time which would be seriously injurious, the master has no power to do any of these things unless specially authorized.

If he does them in the home port, the owner is liable only where, by some act or words, he ratifies or adopts the act of his master. If in a foreign port, even if the owner were there, he may be liable, on his master's contracts of this kind, to those who neither knew nor had the means of knowing that the master's power was superseded or qualified by the presence of the owner. The master being by the law-merchant the *general agent* of the owner of the ship, no one dealing with him can be prejudiced by any private or secret limitations to his authority by the owner.

Beyond the ordinary extent of his power, which is limited to the care and navigation of the ship, he can go, as we have said, only from necessity. But this necessity must be greater to justify some acts than for others. Thus, he can sell the ship only in a case of extreme and urgent necessity; that is, only when it seems in all reason impossible to save her, and a sale is the only way of preserving for the owners or insurers any part of her value. We say "seems;" for if such is the appearance at the time, when all existing circumstances are carefully considered and weighed, the sale is not void, if some accident, or cause which could not be anticipated, as a sudden change in the wind or sea, enables the purchaser to save her easily. Several such cases have occurred.

So, to justify him in pledging her by bottomry, there must be a stringent and sufficient necessity; but it may be far less than is required to authorize a sale. It is enough if the money is really needed for the safety of the ship, and cannot otherwise be raised, or not without great waste.

So, to charter the ship, there must be a sufficient necessity, unless the master has express power to do this. But the necessity for this act may be only a mercantile necessity; or, in other words, a certain and considerable mercantile expediency.

So, to bind the owners to expense for repairs or supplies, there must also be a necessity for them. But here it is sufficient if the repairs or supplies are such as the condition of the vessel, and the safe and comfortable prosecution of the voyage, render proper.

So the master—unlike other agents, who have generally no power of delegation—may substitute another for himself, to discharge all his duties, and possess all his authority, if he is unable to discharge his own duties, because, in that case, the safety of the ship and property calls for this substitution.

Generally, the master has nothing to do with the cargo between the lading and the delivery. But, if the necessity arises, he may sell the cargo, or a part of it, at an intermediate port, if he cannot carry it on or transmit it, and it must perish before he can receive specific orders. So, he may sell it, or a part, or pledge (or hypothecate) it, by means of a *respondentia* bond, in order to raise money for the common benefit. A bond of respondentia is much the same thing as to the cargo that a bottomry bond is as to the ship. Money is borrowed by it, at maritime interest, on maritime risk, the debt to be discharged by a loss of the goods. But it can be made by the master only on even a stronger necessity than that required for bottomry;

only when he can raise no money by bills on the owner, nor by a bottomry of the ship, nor by any other use of the property or credit of the owner. Indeed, it seems that, when goods are sold by the master to repair the vessel, it is to be considered as in the nature of a forced loan, for which the owner of the vessel is liable to the shipper, whether the vessel arrive or not.

The general remark may be made, that a master has no ordinary power, and can hardly derive any extraordinary power even from any necessity, except for those things which are fairly within the scope of his business as master, and during his employment as master. Beyond this he has no agency or authority that is not expressly given him.

The owner is liable also for the wrong-doings of the master; but with the limitation which belongs generally to the liability of a principal for the torts of his agent, or of a master for the torts of his servant. That is, he is liable for any injury done by the master while acting *as the master of his ship*, but not for the wrongful acts which he may do personally when he is not acting in his capacity of master, although he holds the office at the time. Thus if, through want of skill or care while navigating the ship, he runs another down, the owner is liable for the collision. But the owner is not liable if the master embezzles goods which he takes on board to fill his own privilege, to have himself all the freight and profit.

2. Of Collision.—The general rules in this country in respect to collision are that the party in fault suffers his own loss and compensates the other party for the loss he may sustain. If neither is in fault, the loss rests where it falls. If both parties are in fault, the loss rests, where it falls, by the rules of the common law, but is equally divided in Admiralty. There are certain rules in regard to sailing, founded on the principle that the ship which can change its course to avoid collision with least inconvenience must do so; and therefore that the ship that has a fair or leading wind shall give way to one on a wind, or go under her stern; and if vessels are approaching each other, both having the wind on the beam, or so far free that either may change its course in either direction, the vessel on the larboard tack must give way, and each pass to the right.

The same rule governs vessels sailing on the wind, and approaching each other, when it is doubtful which is to the windward. But if the vessel on the larboard tack is so far to windward, that, if both persist on their course, the other will strike her on the lee side, abaft the beam, or near the stern, in that case the vessel on the starboard tack should give way, as she can do so with greater facility, and less loss of time and distance, than the other. Again, when vessels are crossing each other in opposite directions, and there is the least doubt of their going clear, the vessel on the starboard tack should persevere on her course, while that on the larboard tack should bear up, or keep away before the wind.

It is also held that steam-vessels are regarded in the light of vessels navigating with a fair wind, and are always under obligations to do whatever a sailing-vessel going free or with a fair wind would be required to do under similar circumstances. Their obligation extends still further, because they possess a power to avoid the collision not belonging to sailing-vessels, even if they have a free wind, the master having the steamer under his command, both by changing the helm and by stopping or reversing the engines.

As a general rule, therefore, when meeting a sailing-vessel, whether close-hauled or with the wind free, the latter has a right to keep her course, and it is the duty of the steamer to adopt such precautions as will avoid her.

Rev. Stat., § 4233 in addition to the sailing and steering rules above mentioned provides rules for the display of lights and the use of fog signals by different classes of vessels on different occasions. Briefly stated these rules provide that in the night all vessels in motion shall carry a green light on the storboard side and a red light on the port side. Ocean steamships and steamers carrying sail carry in addition a white light on the foremast head ; coasting steamers a central range of two white lights ; and steamers towing other vessels two white mast-head lights arranged vertically. All vessels at anchor in a roadstead must must show a white light.

In foggy weather a steamer under way must sound a steam-whistle at intervals of not more than one minute. Sailing-vessels under way must sound a fog horn at intervals of not more than five minutes.

Both steamers and sailing-vessels at anchor must sound a bell at intervals of not more than five minutes.

For any misdeed of the master, for which the owner is liable, this liability is limited in our own country, as well as in many others, to the value of the ship and freight.

SECTION XI.

THE SEAMEN.

THE law makes no important distinction between the officers, or mates, as they are usually called, and the common sailors. Our statutes contain many provisions in behalf of the seamen, and in regulation of their rights and duties, although the contract between them and the ship-owner is in general one of hiring and service. They relate principally to the following points: 1st, the shipping articles; 2d, wages; 3d, provisions and subsistence; 4th, the seaworthiness of the ship; 5th, the care of seamen in sickness; 6th, the bringing them home from abroad; 7th, regulation of punishment.

First. Every master of a vessel bound from a port in the United States to any foreign port, except British North America, West India Islands, or Mexico, or of any ship or vessel of the burden of seventy-five tons or upwards, bound from a port in the Atlantic to one on the Pacific, or *vice versa*, is required to have shipping articles, which articles every seaman on board must sign, in the presence of a U. S. Shipping Commissioner, and they must describe accurately the voyage, and the terms on which each seaman ships. Courts will protect seamen against uncertain or catching language, and against unusual and oppressive stipulations. And the shipping articles ought to declare explicitly the ports of the beginning and of the termination of the voyage. If a number of ports are mentioned, they are to be visited only in their geographical and commercial order, and not revisited unless the articles give the master a discretion. Admiralty courts enforce the stipulations if they are fair and legal, or disregard them if they are otherwise, and exercise a liberal equity on this subject; but courts of common law are more strictly bound by the letter of the contract. The articles are generally conclusive as to wages; but accidental errors or omissions may be corrected by either party, by parol.

Second. Wages are regulated as above stated, and also by limiting the right to demand payment in a foreign port to one-third the amount then due, unless it be otherwise stipulated. Seamen have a lien on the ship and on the freight for their wages, which is enforceable in Admiralty. By the ancient rule, that freight is the mother of wages, any accident or misfortune which makes it impossible for the ship to earn its freight destroys the claim of the sailors for wages. The reason is, to hold out to the seamen the strongest possible inducement to enable the ship to carry the goods and earn the freight.

Third. Provisions of due quality and quantity must be furnished by the owner, and double wages are given to the seamen when on short allowance, unless the necessity be caused by some peril of the sea, or other accident of the voyage. The master may at any time put them on a fair and proper allowance to prevent waste.

Fourth. The owner is bound to provide a seaworthy vessel, and our statutes provide the means of lawfully ascertaining her condition at home or abroad, by a regular survey, on complaint of the mate and a majority of the seamen. But this very seldom occurs in practice. If seamen, after being shipped, refuse to proceed upon their voyage, and are complained of and arrested, the court will inquire into the condition of the vessel, and if the complaint of the seamen is justified, in a greater or less degree, will discharge them, or mitigate or reduce their punishment.

Fifth. As to sickness, our statutes require that every ship of the burden of one hundred and fifty tons or more, navigated by ten persons or more in the whole, and bound on a voyage without the limits of the United States, and also that vessels of seventy-five tons or more, navigated by six or more persons in the whole, bound from the United States to any port in the West Indies, shall have a proper medicine-chest on board. Moreover, twenty cents a month are deducted from the wages of every seaman to make up a fund for the maintenance of marine hospitals, to which every sick seaman may repair without charge. In addition to this the general law-merchant requires every ship-owner or master to provide suitable medicine, medical treatment, and care, for every seaman who becomes sick, wounded, or maimed, in the service of the ship, at home or abroad, at sea or on shore; unless this is caused by the misconduct of the seaman himself. The right to these things extends to the officers of the ship.

Sixth. The right of the seaman to be brought back to his own home is very jealously guarded by our laws. The master should always present his shipping articles to the consul or commercial agent of the United States, at every foreign port which he visits, but is not required by law to do this unless the consul desires it. He must, however, present them to the first boarding officer on his arrival at a home port. And if, upon an arrival at a home port from a foreign voyage, it appears that any of the seamen are missing, the master must account for their absence. If he discharge a seaman abroad with his consent, he must pay to the American consul of the port, or the commercial agent, over and above the wages then due, three months' wages, of which the consul gives two to the seaman, and remits one to the treasury of the United States to form a fund for bringing home seamen from abroad. This obligation does not apply where the seaman is discharged because the voyage is necessarily broken up by a wreck, or similar misfortune. But proper measures must be taken to repair the ship if possible, or to obtain her restoration, if captured. And the seamen may hold on for a reasonable time for this purpose, and if discharged before, may claim the extra wages.

Our consuls and commercial agents may authorize the discharge of a seaman abroad for his gross misconduct, and he then has no claim for the extra wages. On the other hand, if he be treated cruelly, or if the ship be unseaworthy by her own fault, or if the master violate the shipping articles, the consul or commercial agent may direct the discharge of the seaman; and he then has a right to these extra wages, and this even if the seaman had deserted the ship by reason of such cruelty. They may also send our seamen home in American ships, which are bound to bring them for a compensation not to exceed ten dollars each, and the seamen so sent must work and obey as if originally shipped. It is of great importance that the powers and duties of our consuls abroad should be distinctly defined and well known. And Congress has recently enacted an excellent statute on this subject.

If a master discharges a seaman against his consent, and without good cause, in a foreign port, he is liable to a fine of five hundred dollars, or six months' imprisonment. And a seaman may recover full indemnity or compensation for his loss of time, or expenses incurred by reason of such discharge.

Seventh. As to the regulation of punishment, flogging has been abolished and prohibited by law. Flogging means the use of the cat, or a similar instrument, but not necessarily blows of the hand, or a stick or a rope. Desertion, in maritime law, is distinguished from absence without leave, by the intention not to return. This intention is inferred from a refusal to return. If he returns and is received, this is a condonation (or forgiving) of the offence, and is a waiver of the forfeiture. If he desert before the voyage begins, he forfeits the advanced wages, and as much more; but he may be apprehended by a warrant of a justice, and forcibly compelled to go on board, and this is a waiver of the forfeiture. By desertion on the voyage, he forfeits all his wages and all his property on board the ship, and is liable to the owner for all damages sustained in hiring another seaman in his place.

Desertion, under the statute of the United States on this subject, is a continued absence from the ship for more than forty-eight hours without leave, and there must be an entry in the log-book of the time and circumstance. But any desertion or absence without leave, at a time when the owner has a right to the seaman's service, is an offence by the law-merchant, giving the owner a right to full indemnity.

SECTION XII.

PILOTS.

An Act of Congress authorizes the several States to make their own pilotage laws, and questions under these laws are cognizable in the State courts. No one can act as pilot, and claim the compensation allowed by law for the service, unless duly appointed. And he should always have with him his commission, which should always designate the largest vessel he may pilot, or that which draws the most water. If a pilot offers himself to a ship that has no pilot, and that is entering or leaving a harbor and has not already reached certain geographical limits, the ship must pay him pilotage fees, whether his services are accepted or not. As soon as the pilot stands on deck, he has control of the ship. But it remains the master's duty and power, in case of obvious and certain disability, or dangerous ignorance or error, to disobey the pilot, and dispossess him of his authority; but the master should interfere with the pilot only in extreme cases. If a ship neglect to take a pilot when it should and can take one, the owners will be answerable in damages to shippers or others for any loss which may be caused by such neglect or refusal. Pilots are themselves answerable for any damage resulting from their own negligence or default, and have been held strictly to this liability.

SECTION XIII.

MATERIAL MEN.

MARITIME law calls by this name all persons employed to repair a ship or furnish her supplies. Such persons, and indeed all who work upon her, have a lien on the ship for their charges. There is, however, this important distinction. Material men, by Admiralty law, have a lien only on foreign ships, and not on domestic ships. But many of our States have by statute given this lien to material men on all ships without distinction; as in New York, Pennsylvania, Massachusetts, Maine, Illinois, Indiana, Missouri, Alabama, and Michigan; and in Louisiana the same lien exists under the general Spanish law.

It has been held that such a lien extends beyond mere repairs,—certainly to alterations, and perhaps to reconstruction,—but not to original building, unless the statute includes ship-building. A laborer, employed in general work by a shipwright or mechanic, and by him sometimes employed on the vessel, and sometimes elsewhere, gets no lien on the vessel for that part of the labor performed about it. These statute liens take precedence of the claims of all other creditors.

It has been said in previous pages, that our States are foreign to each other for most purposes under the law of Admiralty; and they are so as to the lien of material men. Therefore, in States in which there is no statute on the subject, material men would have a lien for supplies or repairs for a vessel belonging to any other of our States, but not for a vessel belonging to the State in which the supplies were furnished or the repairs were made. See the chapter on Liens.

(91.)

Bill of Sale of Vessel.

To all to whom these Presents shall come, Greeting: Know ye, that (*name of seller*) of the (*town or city and county where he resides*) in the State of owner (*if the seller owns only a part of the vessel, here say what part*) of the (*ship, or what else it is*) or vessel called the of the burden of tons, or thereabouts, for and in consideration of the sum of dollars, lawful money of the United States of America, to me (*or us, if more sellers than one*) in hand paid, before the ensealing and delivery of these presents, by (*name of the buyer*) the receipt whereof I (*or we*) do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (*name of the buyer*) and his executors, administrators, and assigns, the whole (*or name the part*) of said or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, tackle, apparel, and furniture, and all other necessaries thereunto appertaining and belonging. The certificate of the enrollment of which said or vessel, is as follows:

No. ENROLLMENT.

In conformity to an Act of Congress of the United States of America, entitled "An Act for enrolling and licensing Ships and Vessels," etc., passed the 18th of February, 1793: and "An Act to regulate the Foreign and Coasting Trade on the Northern, North-eastern, and North-western Frontiers of the United States, and for other purposes," passed the 17th of June, 1864, and all the acts of the 7th July, 1838, 29th July, 1850, and 6th May, 1864 (*name of the owner*) having taken or subscribed the oath required by the said acts, and having sworn that he citizen of

the United States, and sole owner, or owners of the or
vessel, called the of whereof
is at present master; and is a
citizen of the United States, and that the said or
vessel was built at in the year 18 , as appears by
And having certified that the said
vessel has deck, mast , and that her length is
feet, her breadth feet, her depth
feet, her and that she measures
tons and hundredths.

	Tonnage.	$\frac{1}{100}$
Capacity under tonnage deck, ...		
Capacity between decks above tonnage deck, . .		
Capacity of enclosure on upper deck, ...		
Total tonnage, ...		

that she is (*kind of vessel*) and that she has a figure-head or a gallery.

And the said having agreed to the description and admeasurement above specified, and sufficient security having been given, in conformity with the terms of the said acts, the said
has been duly enrolled at the port of

Given under my hand and seal of office, at the port of
this day of in the year one thousand
nine hundred and

Collector.

To Have and to Hold the said or vessel, and appurtenances thereunto belonging, to him (*or them*), the said (*name of the buyer*) and his (*or their*) executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him (*or them*), the said (*name of the buyer*) and his (*or their*) executors, administrators, and assigns forever: and I (*or we*) the said (*name of the seller*) ha and by these presents do promise, covenant, and agree, for myself (*or ourselves*) and my (*or our*) heirs, executors, administrators, and assigns, to and with the said (*name of buyer*) and with his (*or their*) heirs, executors, administrators, and assigns, to warrant and defend the said or vessel, and all the other before-mentioned appurtenances against the lawful claims and demands of all and every person or persons whomsoever, and that I (*or we*) ha good right and authority to sell and dispose of the same in manner aforesaid.

In Testimony Whereof, The said has hereunto
set his hand and seal, this day of
one thousand nine hundred and

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF , } ss.
COUNTY.

I, a Notary Public in and for the in the County of and State of , do hereby certify, that personally known to me as the same person whose name subscribed to the annexed instrument of writing, appeared before me this day in person, and acknowledged that signed, sealed, and delivered the said instrument or writing as free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this day of A.D. 19

Notary Public.

(92.)

Mortgage of a Vessel.

Know all Men by these Presents, That I (*or we, giving the names and residence of all the mortgagors*) am (*or are*) held and firmly bound unto (*the names and residence of the mortgagee*) in the just and full sum of dollars, lawful money of the United States of America, to be paid to the said or his (*or their*) executors, administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators firmly by these presents.

Dated at this day of in the year one thousand nine hundred and

Whereas, (*name of the mortgagee*) has this day lent and advanced unto the said (*name of the mortgagor*) the sum of dollars on the body, tackle, and appurtenances of the or vessel called the of the burden of tons, or thereabouts; the said (*name of the mortgagor*) being the (*owner*) of the same.

Now the Condition of this Obligation is such, That if the said (*name of the mortgagor*) shall pay or cause to be paid to the said (*name of the mortgagee*) the sum of dollars (the amount loaned), and interest thereon on or before the day of in the year 19

then this obligation to be void; otherwise, to remain in full force and virtue. And in consideration of and as security for said loan as aforesaid, the said (*vessel, or ship, or steamer, as it may be*) is by these presents assigned, pledged, mortgaged, set over, and conveyed to the said heirs and assigns; the certificate of the enrollment of which vessel is as follows, viz.:

(*Enrollment as in the previous form of a Bill of Sale of a Vessel.*)

It being Mutually Understood and Agreed, That in case the amount of said loan and interest, or any part thereof, according to the terms of these presents, shall remain due and unpaid to said (*name of mortgagee*) after the expiration of , the said (*name of mortgagee*) may take possession of said and appurtenances, and sell the same at public auction, in order to satisfy the amount then due, without any proceedings in court or otherwise, for the purpose of authorizing such sale, and thereupon may execute and deliver a sufficient bill of sale to transfer completely to any purchaser or purchasers all title and property in and to the said and appurtenances, to the said (*name of mortgagor*) as (*owner*) thereof, now belonging.

The said (*name of the mortgagee*) thereupon to account to the said (*name of the mortgagor*) for any surplus of such sale, after paying all charges and expenses.

And in case of such sale as aforesaid, the said (*name of the mortgagor*) executors, administrators, or assigns, shall, whenever thereto requested, make, execute, and deliver to such purchaser or purchasers, another bill of sale of said and appurtenances, in which the enrollment shall be recited as above, for the transferring completely to said purchaser or purchasers all the (*right*), (*interest*), and (*claim*), of said executors, administrators, or assigns, as (*owner*) of said . And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers, by the said when thereto requested, the said is hereby constituted and appointed the legal attorney of the said for the purpose of making, executing, and delivering such bill of sale, and the said hereby ratifies and confirms the act of the said as attorney for said purpose.

And it is hereby further Agreed, That insurance shall be made at some office in on the said for the security of the said (*name of the mortgagee*) to an amount not less than the sum loaned as aforesaid, and the said (*name of the mortgagee*) is hereby authorized to procure such insurance, at the expense of the said (*name of the mortgagor*) if not seasonably obtained by him.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of
(*Witness.*)

State of
County of } ss.

On the day of in the year one thousand nine hundred and before me personally came the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(93.)

A Charter-Party.

This Charter-Party, Made and concluded upon in the day of in the year one thousand nine hundred and between (*name of the owner*) owner of the of of the burden of tons or thereabouts, register measurement, now lying in the harbor of of the first part, and (*name of the hirer*) of the second part, witnesseth, that the said part of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said part of the second part, do covenant and agree on the freighting and chartering of the said vessel unto the said part of the second part, for the voyage from the port of

on the terms following; that is to say,—

First. The said part of the first part do engage that the said vessel in and during the said voyage shall be kept tight, stanch, well-fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage.

Second. The said part of the first part do further engage that the whole of said vessel (with the exception of the cabin, the deck, and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions) shall be at the sole use and disposal of the said part of the second part during the voyage aforesaid; and that no goods or merchandise whatever shall be laden on board, otherwise than from the said part of the second part, or agent, without consent, on pain of forfeiture of the amount of freight agreed upon for the same.

Third. The said part of the first part do further engage to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said part of the second part, or agents, may think proper to ship.

And the said part of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said part of the first part, do covenant and agree with the said part of the first part, to charter and hire the said vessel as aforesaid, on the terms following, that is to say:—

First. The said part of the second part do engage to provide and furnish to the said vessel

Second. The said part of the second part do further engage to pay to the said part of the first part, or agent, for the charter or freight of the said vessel during the voyage aforesaid, in the manner following, that is to say:—

It is further agreed between the parties to this instrument, that the said part of the second part shall be allowed, for the loading and discharging of the vessel at the respective ports aforesaid, lay days as follows, that is to say:—

and in case the vessel is longer detained, the said part of the second part agree to pay to the said part of the first part, demurrage at the rate of Spanish milled dollars per day for each and every day so detained, provided such detention shall happen by default of the said part of the second part, or agent.

It is further understood and agreed, that the cargo shall be received and delivered alongside within reach of the vessel's tackles.

It is also further understood and agreed, that this charter shall commence when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the part of the second part, or to agent .

To the true and faithful performance of all the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their executors, administrators, and assigns, and also the said vessel, freight, tackle, and appurtenances; and the merchandise to be laden on board, each to the other, in the penal sum of

In Witness Whereof, The said parties have hereunto interchangeably set their hands and seals, this day of 18

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of
(Witnesses.)

(94.)

A Bill of Lading.

Shipped, in good order and well conditioned, by (*name of the shipper*) on board the called the whereof is master, now lying in the port of and bound for

To say:—(*here describe or enumerate the parcels*)

being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the aforesaid port of (the dangers of the seas only excepted), unto (*the name of the consignee*) or to assigns, he or they paying freight for the said
(*here specify the rate of freight agreed to be paid*)
with primage and average accustomed.

In Witness Whereof, The master or purser of the said vessel hath affirmed to bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in the day of 18

(*Signature.*)

(95.)

Shipping Articles, in Common Use.

United States of America. It is agreed, between the master and seamen, or mariners, of the (*name of the vessel*) of
whereof
is at present master, or whoever shall go for master, now bound from the port of , to

That, in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage: And the said master doth hereby agree with and hire the said seamen or mariners for the said voyages, at such monthly wages or prices, to be paid pursuant to this agreement, and the laws of the Congress of the United States of America: And they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel on board any other vessel, or be on shore, under any pretence whatsoever, until the abovesaid voyage be ended, and the said vessel be discharged of her loading, without leave first obtained of the captain or commanding officer on board; that in default thereof, he or they will be liable to all the penalties and forfeitures mentioned in the Marine Law, enacted for the government and regulation of seamen in the merchants' service, in which it is enacted, "That if any seaman or mariner shall absent himself from on board the ship or vessel, without leave of the master or officer commanding on board, and the mate or other officer having charge of the log-book shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owner or owners of the said ship or vessel, and moreover shall be liable to pay him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place."

And it is further agreed, that in case of desertion, death, or imprisonment, the wages are to cease.

And it is further agreed by both parties, that each and every lawful command which the said master or other officer shall think necessary hereafter to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, shall be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with everything belonging to him or them on board the said vessel.

And it is further agreed on, that no officer or seaman belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of said vessel at the said vessel's final port of discharge, and her cargo delivered.

And it is hereby further agreed, between the master, officers and seamen of the said vessel, that whatever apparel, furniture, and stores each of them may receive into their charge, belonging to the said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged, through their carelessness or insufficiency, it shall be made good by such officer or seaman, by whose means it may happen, to the master and owners of the said vessel.

And it is hereby expressly agreed, that should the said ship on the said voyage be seized, detained, or fined, for smuggling tobacco, or any other article, by one or more of the undersigned sailors, cooks, or stewards, they shall all be responsible for the damages thence resulting, and shall severally forfeit their wages, and all their goods and chattels on board, to the amount of such damage, and that the certificate of the person or persons who may seize, detain, or fine the said ship for smuggling, signed by him or them, and verified by the American consul at   under his seal of office, shall be conclusive evidence of the facts therein stated, in all courts whatsoever, especially and as to the fact that smuggling had been committed, the individual or individuals by whom the same had been committed, the amount of the fine imposed therefor upon the said ship, the incidental expenses thereon, and the number of days the said ship was detained in consequence thereof. No grog allowed, and none to be put on board by the crew; and no profane language allowed, nor any sheath-knives permitted to be brought or used on board.

And whereas, it is customary for the officers and seamen, while the vessel is in port, or while the cargo is delivering, to go on shore at night to sleep, greatly to the prejudice of such vessel and freighters, be it further agreed by the said parties, that neither officer nor seaman shall, on any pretence whatever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary to order relative to said vessel or cargo; and whereas it frequently happens that the owner or captain incurs expenses while in a foreign port, relative to the imprisonment of one or more of his officers or crew, or in the attendance of nurses, or in the payment of board on shore for the benefit of such person or persons: now it is understood and agreed by the parties hereunto, that all such expenditures as may be incurred by reason of the foregoing premises shall be charged to, and deducted out of the wages of, any officer or such one of the crew by whose means or for whose benefit the same shall have been paid.

And whereas, it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the vessel's husband, or his representative, to see the same safely landed.

That each seaman or mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no desertion, plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to the payment of the wages or hire that may become due to him pursuant to this agreement, as to their names is severally affixed and set forth: *Provided, nevertheless*, that if any of the said crew disobey the orders of the said master or other officer of the said vessel, or absent himself at any time without liberty, his wages due at the time of such disobedience or absence shall be forfeited; and in case such person or persons so forfeiting wages shall be reinstated or permitted to do further duty, it shall not do away such forfeiture. It being understood and agreed, by the said parties, that parol proof of the misconduct, absence, or desertion of any officer or any of the crew of said vessel, may be given in evidence at any trial between the parties to this contract, any act, law, or usage to the contrary thereof notwithstanding.

In Testimony Whereof, and for the due performance of each and every of the above-mentioned articles and agreements, and acknowledgment of their being voluntarily, and without compulsion or any other clandestine means being used, agreed to and signed by us, we have each and every of us hereunto affixed our hands, the month and day against our names as hereunder written.

And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they will render themselves on board the said vessel, on or before the day of
19 at o'clock in the noon.

This is signed by all the officers and crew, under seventeen columns, which give the following particulars: Date of entry, names, stations, birthplace, age, height in feet and inches, wages per month, advance wages, advance abroad, hospital money, time of service in months and days, whole wages, wages due, sureties, witness. On the back of this instrument is usually a receipt in full in the following words. It should be remarked, however, that the sailor's discharge of all demands for assault and battery, or imprisonment, etc., is of little, if any, legal force.

We, the undersigned, late mariners on board the on her late voyage described on the other side of this instrument, and now performed to this place of payment, do hereby, each one for ourselves, with our signatures, acknowledge to have received of agent or owner of said the full sum hereunder set against our names; being in full amount of our wages for our services, and all demands for assault and battery, or imprisonment, of whatever name or nature, against said her owners or officers, to the day or date hereunder also set against our names.

(*Signatures.*)

(96.)

A Bottomry Bond.

Know all Men by these Presents, That I *(name of the master or of the owner if the Bond is made by him)*, now master and commander of the or vessel called the of the burden of tons, or thereabouts, now lying in the port of am held and firmly bound unto (*name of the lender who is the obligee of the Bond*) in the sum of lawful money of the United States of America, to be paid to the said or to certain attorney , executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said vessel, her tackle, apparel, and furniture, firmly by these presents. Sealed with my seal, at this day of in the year of our Lord one thousand nine hundred and

Whereas, The above bounden (*name of the obligor*) has been obliged to take up and borrow, and hath received of the said for the use of the said vessel, and for the purpose of fitting the same for sea, the sum of lawful money of the United States of America, which sum is to be and remain as a lien and bottomry on the said vessel, her tackle, apparel, and furniture, at the rate or premium of (*state the rate of the maritime interest*) for the voyage. In consideration whereof, all risks of the seas, rivers, enemies, fires, pirates, &c., are to be on account of the said (*name of the lender*). And for the better security of the said sum and premium, the said master doth, by these presents, hypothecate and assign over to the said heirs, executors, administrators, and assigns, the said vessel, her tackle, apparel, and furniture.

And it is hereby declared, that the said vessel, is thus hypothecated and assigned over for the security of the money so borrowed, and taken up as aforesaid, and shall be delivered for no other use or purpose whatever, until this bond is first paid, together with the premium hereby agreed to be paid thereon.

Now the Condition of this Obligation is such, That if the above bounden (*the borrower*) shall well and truly pay, or cause to be paid, unto the said (*the lender*) the just and full sum of lawful money as aforesaid, being the sum borrowed, and also the premium aforesaid, at or before the expiration of days after the arrival of the said vessel at

then this obligation, and the said hypothecation, to be void and of no effect, otherwise to remain in full force and virtue. Having signed and executed two bonds of the same tenor and date, one of which being accomplished, the other to be void and of no effect.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

I do not give the form of a Respondentia Bond. This contract is now unusual, and is made only when some special emergency calls for it, and must then be framed to suit that emergency, and express the special terms of the bargain. The foregoing form, in connection with what is said of Respondentia Bonds in the text, and the points in which they resemble Bottomry Bonds and those in which they differ from them, will enable any one to frame a Respondentia Bond suited to most cases.

(97.)

Oath or Affirmation of Consignee or Agent.

District and Port of Philadelphia. I (*name of the consignee*) do solemnly and truly swear (*or affirm*) that the invoice and bill of lading now presented by me to the collector of , are the true and only invoice and bill of lading by me received, of all the goods, wares, and merchandise, imported in the (*name of the vessel*) whereof is master, from for account of any person whomsoever, for whom I am authorized to enter the same: that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice, or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise, and that if, at any time hereafter, I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of the district

And I do further solemnly and truly swear (*or affirm*) that, to the best of my knowledge and belief, (*name and residence of the owner of the goods*) is owner of the goods, wares, and merchandise, mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market-value, of the said goods, wares, and merchandise, all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

this day of 19

(*Signature.*)

Before me, *Collector.*

(98.)

Custom House Power of Attorney. No. 201.

Know all Men by these Presents, That I (*name of principal*) do make, constitute, and appoint (*name of attorney*) my true and lawful attorney for me, and in my name and stead, to enter in due form of law, at the Custom House in the city of all goods, wares, and merchandise, which have been imported or may hereafter be imported, by or which have arrived, consigned, or may hereafter arrive, consigned to , or in which or may be interested or concerned.

And for me and in my name and stead to sign, seal, execute, and deliver all and every bond and bonds which may be required to secure the duties thereon, or for the transportation or exportation of the same; or any other bond or bonds required by the revenue laws or the regulations of the Treasury Department of the United States, or the collector of the customs of the district of relative to any such merchandise; or which may be necessary to obtain the debenture and debentures, upon such of the said goods, wares, and merchandise as may be exported for me or on my account. To have, take, and receive all debenture certificates to be issued thereupon for me and in my name to indorse, assign, and transfer the same; or have, take, and receive the moneys due and to grow due thereon: And generally, as my attorney to do, transact, and perform all custom-house business, of what kind soever, in which I am or may be interested or concerned, as fully and effectually, to all intents and purposes, as I if present there in person could do; also to set my seal to any instrument which may be necessary in the premises, and the same to acknowledge for me to be my deed; and generally to do and perform all things relating to the premises, which I could lawfully do, if personally present, and as fully and effectually to every intent and purpose, although the same should seem to require more precise or special authority than is herein expressed. And especially authorizing and empowering my said attorney, for me and in my name and stead to sign, seal, execute, and deliver all bonds of indemnity and other specialties, and also all other documents which may be necessary for effecting the premises ; hereby ratifying all and whatsoever my said attorney may lawfully do by virtue hereof.

And I hereby further authorize my said attorney at any time, and from time to time at his discretion, by proper letters of attorney, to substitute any other person or persons for himself in my place, and the same at his pleasure to revoke ; hereby giving to the substitute or substitutes, as full power and authority in the premises as is hereby given to my said attorney. And also hereby ratifying and confirming all and every act, matter, and thing that my said attorney or his substitute or substitutes may do in the premises, by virtue of these presents.

And it is hereby declared and understood, that this power shall be and remain in full force and virtue until revoked by written notice given to the collector.

In Witness Whereof, I have hereunto set my hand and seal this day of 19

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF

Be it Known, That on the day of 19 personally appeared and acknowledged before me the foregoing power of attorney to be free act and deed.

In Testimony Whereof, I have hereunto set my hand and seal of office the day of 19

(99.)

Maritime Protest.

UNITED STATES OF AMERICA.

Notary.

STATE OF COUNTY OF

By this Public Instrument of Protest, Be it known, that on the day of in the year of our Lord one thousand nine hundred and before me, a Notary Public in and for the State of County of and dwelling in the city of , State of , duly commissioned and sworn, personally came and appeared (*names of all the parties who make the protest, with a description of each of them, as to occupation and residence*) which said appearers, after having been duly sworn by me, the said notary, upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly declare and depose as follows, to wit: that the (*name of the vessel, describing her generally*), on the day of in the year 19 sailed from the port of bound for the port of with a cargo of that when they started, as aforesaid, the said was stout, stanch and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackled, victualled, apparelled and appointed; and was in every respect fit for the voyage she was about to undertake: And thereafter, on the day of in the year 19 (*here must be set forth with some minuteness the place of any accident or loss, and the circumstances of the occurrence*)

Now, therefore, because of the premises, and as all the loss, damage and injury which already have or may hereafter appear to have happened or accrued to the said or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said or default of him, the said his officers or crew; he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be and remain in full force and virtue, as of right shall appertain. And thereupon the said doth protest, and I, the said notary, at his special instance and request, do, by these presents, publicly and solemnly protest against winds, weather (*and whatever else caused the loss, as fire, pirates, &c.*), and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said or her cargo, already has, or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury, which the said the owner or owners of the said or the owners, freighters or shippers of her said cargo, or any other person or persons concerned in either, already have or may hereafter pay, sustain, incur, or be put unto by, through, or on account of the premises, or for which the insurer or insurers of the said or her cargo, is or are respectively liable to pay, or make contribution or average, according to custom, or their respective contracts or obligations; so that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall upon him, the said his officers and crew.

We, (*repeat here the names of the appearers*) do solemnly swear that the foregoing statement is correct, and contains a true account of all the facts and circumstances of the case, to the best of our knowledge.

(*Signatures of all the appearers.*)

Thus Done and Protested, at my office, in the city of , this day of in the year of our Lord one thousand nine hundred and

Notary Public, County of State of

To all to whom these Presents shall come, I, Notary Public, duly commissioned and qualified, residing at , in the County of and State of , do hereby certify that the foregoing, purporting to be a copy of the protest of the master and a part of the crew of the bearing date the day of last, is a true and correct copy of said protest, which was made before me, examined and compared with the original draft of the same, drawn up and recorded in my office, in Book page and following:

In Testimony Whereof, I have hereunto set my hand, and affixed my notarial seal, this day of A.D. 19

(*Signature.*) (*Seal.*)

(**100.**)

A Steamboat Warrant, as used in the Western States.

Know all Men by these Presents, That we (*name of debtor*) as principal, and (*names of owners of the steamboat*) owners of the steamboat as security, are held and firmly bound unto (*name of creditor*) in the sum of dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this day of nineteen hundred and

The Condition of the above Obligation is such, That, whereas, the said (*name of creditor*) as plaintiff has sued out of the office of justice of the peace, a warrant against the steamboat (*name of the steamboat*) returnable forthwith; being on a demand for the sum of dollars, and cents.

Now, if the said (*name of the debtor*) shall satisfy the amount which shall be adjudged to be owing and due to the said plaintiff in the determination of said suit, together with all costs accruing, then this obligation to be void, otherwise to remain in full force.

(*Signatures.*) (*Seals.*)

Approved, (*Sheriff or Constable.*)

CHAPTER XXVI.

MARINE INSURANCE.

SECTION I.

HOW THE CONTRACT OF INSURANCE IS MADE.

At the present day insurance is seldom made by individuals. Formerly, this was the universal custom in our commercial cities. Afterwards, companies were incorporated for the purpose of making insurance on ships and their cargoes; and the manifold advantages of this method have caused it to supersede the other. But an insurance company is not bound to insure for all who offer, and it has been held that an action will not lie against insurers for combining not to insure for a certain person, however malicious their motive may be.

The contract of insurance binds the insurer to indemnify the insured against loss or injury to certain property or interests which it specifies, from certain perils which it also specifies. The consideration for this obligation on the part of the insurer is the premium paid to the insurer, or promised to be paid to him, by the insured.

The instrument in which this contract is expressed is called a Policy of Insurance. But no instrument is essential to the validity of the contract; for if the proposals of the insured are written in the usual way in the proposal book of the insured, and signed by their officer with the word "done," or "accepted," or in any usual way to indicate that the bargain is made, it is valid, although no policy be delivered; and it would be construed as an insurance upon the terms expressed in the policy commonly used by that company.

If proposals are made, on either side, by letter, and accepted by the other party, also by letter, this is a valid contract of insurance as soon as the party accepting has mailed his letter to that effect, if he have not previously received notice of a withdrawal of the proposals.

The form of the policy is generally that which has been used for many years both in England and in this country, with such changes and modifications only as will make it express more accurately the bargain between the parties. And for this purpose it may be and is varied at pleasure.

It is subscribed only by the insurers; but binds both parties. The insured are bound for the premium, although no note is given. The date may be controlled by evidence showing when it was made and delivered; but if delivered after its date, it takes effect at and from its date, if that were the intention of the parties.

It may be effected on application of an agent of the insured, if he have full authority for this purpose; which need not be in writing. But a mere general authority, even if it related to commercial matters, or to a ship itself, as that of a "ship's husband," is not sufficient.

A party may be insured who is not named, if "for whom it may concern," or words of equivalent import, are used. But a party who seeks to come in under such a clause must show that he was interested in the property insured at the time the insurance was made, and that he was in the contemplation of the party asking insurance. The phrase "on account of owners at the time of loss," or an equivalent phrase, will bring in those who were intended, if they owned the property when the loss occurred, although there were assignments and transfers between the time of insurance and the loss.

Each person whose several interest is actually insured by any such general phrase may demand or sue in his own name.

If the nominal insured is described as "agent" generally, this is equivalent to "for all whom it may concern." And an insurance "for ———" will be read as for all whom it may concern, if that were intended. So, if the designation of the insured be common to many persons, the intention of the parties must decide for whom it is made. Whatever is written on any part of the sheet containing the policy, or even on a separate paper, if referred to or signed by the parties as a part of the policy, is thereby made a part of it.

But things said by either party while making their bargain, or written on other paper, and not so referred to or signed, form no part of it. The policy may expressly provide that its terms shall be made definite, especially as to the property insured, by subsequent indorsements or additions. Thus, it is very common to insure property to a certain amount, "from A to B, on board ship or ships, as shall hereafter be indorsed on this policy. And when this or any equivalent phrase is used, the insured requests the insurers to indorse on the policy the name of the vessel, and the amount shipped, as soon as he has notice of it.

Alterations may be made at any time by consent. But a material alteration by either party, without the consent of the other, renders the contract void; although it was made honestly, in the hope or belief of its being assented to. A court of equity will correct a material mistake of fact.

A policy may be assigned, and the assignee may sue in the name of the assignor. If the loss is made by the policy payable "to order" or "to bearer," it will then by negotiable by indorsement or delivery, but it is not certain that the transferee can even then sue in his own name. In New York and some other States, not only these assignees, but other assignees of debts or contracts, may sue in their own names.

If the insured transfers the property, unaccompanied by a transfer of the policy with consent of the insurer, this discharges the policy, unless it was expressly made for the benefit of whoever should be owner at the time of the loss, as before stated. There is usually a clause to the effect that the policy is void if assigned without the consent of the insurers. But this does not apply to an assignment by force of law, as in a case of insolvency, or in a case of death. And after a loss has occurred, the claim against the insurers is always assignable like any other debt. And a seller who remains in possession of the property as trustee for the purchaser, or a mortgagor retaining possession, may retain the policy, and preserve his rights.

SECTION II.

THE INTEREST OF THE INSURED.

THE Contract of Insurance is a contract of indemnity for loss. The insured must, therefore, be interested in the property at the time of the loss. The value to be paid for may be agreed upon beforehand, and expressed in the policy, which is then called a *valued policy;* or left to be ascertained by proper evidence, and the policy is then called an *open policy.*

This valuation, if in good faith, is binding on both parties, even if it be very high indeed. But a *wager policy*, that is, one without interest, is void; and although there be some interest, the valuation may still be so excessive as to be open to the objection that the interest is a mere cover, and that the contract is void because only one of wager. The valuation is void if fraudulent in any respect; as if it cover an illegal interest or peril. And in this case the fraud vitiates and avoids the whole contract, and the insured recovers nothing. And if the valuation is gross and excessive, fraud may be presumed.

The insured may apply his valuation to the whole property, or to that part of it which he wishes to insure; thus he may cause himself to be insured for one-half of a cargo, the whole of which is valued at $20,000, or for one-half, which half is valued at $20,000; and if the policy says, "Insured $15,000 on half of the ship Scipio (or on her cargo), valued at $20,000," whether it is meant that the whole ship (or cargo) is valued at $20,000, or the half only that is insured, will be determined by a reasonable construction of the language used. If he owns the whole, the valuation, in general, will be held to apply to the whole; and only to a part, if he owns only a part.

He may value one thing insured, and not another; or may value the same thing in one policy, and not in another; and then the valuation does not affect the policy which does not contain it. If only a part of the goods included in the valuation are on board and at risk, it applies to them in due proportion to their value.

A valuation of an outward cargo may be taken as a valuation of a return cargo, substituted for the other by purchase, and covered by the same policy. And a valuation will cover the insured's whole interest in the thing valued, including the premium, unless a different purpose is expressed or indicated.

A valuation of freight applies to the freight of the whole cargo, and if a part only be at risk, it applies in proportion. And it applies either to the whole voyage, or to freight earned by voyages which form parts of the whole, as may be intended and expressed.

If profits are insured as such, they are generally valued, but may be insured by an open policy. If they are valued, the loss of the goods on which the profits were to have been made, implies in this country a loss of the valued profits, without proof that there would have been any profit whatever; it seems to be necessary in England to show that there would have been some profit, and then the valuation attaches.

It is very common to insure profits, in fact, without saying anything about them, by a valuation of the goods sufficiently high to include all the profits that can be made upon them.

In an open policy, where the value insured is to be determined by evidence, the value of the property—whether ship or goods—which is insured, is its value when the insurance took effect, including the premium of insurance; as the law of insurance intends indemnifying the assured as accurately as may be for all his loss. If a ship be insured, its value throughout the insurance is the same as at the beginning, without allowance for the effect of time upon it. And all its appurtenances, in a mercantile sense of this phrase, enter into its value.

While the *value* of the property does not vary with time, the *interest* of the insured at the time of the loss (which may be the whole, or half, or any other part) is that on which he founds his claim. Thus, if an owner of a ship is insured $20,000 on ship A. B., valued at $30,000, and afterwards sells half of the ship, and it is subsequently lost, he recovers only $10,000. But if he owned half originally, and insured that, and before the loss acquired the other half, he recovers only for the half insured.

Generally, the value of goods is their invoice price, with all those charges, commissions, wages, etc., which enter into the cost to the owner when the risk commences. The drawback is not deducted; and the expenses incurred after the risk begins, as for freight, etc., are not included. And the rate of exchange at the beginning of the risk is taken.

SECTION III.

THE INTEREST WHICH MAY BE INSURED.

A MERE possibility or expectation cannot be insured, but any actual interest may be. If one has contracted to buy goods, he may insure them, and will recover if the property be in him at the time of the loss; for if they are ther destroyed, it will be his loss. (For what is meant by the property being in him, see the chapter on Sales.)

If one has taken on himself certain risks, or agreed to indemnify another for them, he may insure himself against the same risks. The policy may express and define the interest in such a way that any change in the nature of it will discharge the insurance. If it is not so defined and declared, a change, as from the interest of an owner to that of a mortgagor, or of a mortgagee, will not defeat the policy.

A mere indebtedness to a party on account of property gives the creditor no insurable interest; thus, one who repaired a house or a ship cannot insure the house or ship merely because the owner owes him; but if the creditor has a lien on the property, this is an insurable interest. And, generally, every bailee or party in possession of goods, with a lien on them, may insure them. And a lender on bottomry or respondentia may insure the ship or goods. And any persons who have possession of property, or a right to possession, and may legally make a profit out of it, as factors on commission, consignees, or carriers, may insure their interest.

If a mortgagee be insured, and recovers from the insurers, he, generally, at least, transfers to them the security for his debt, or accounts with them for its value; because, to the extent of that security, he has met with no loss, and, if he did not transfer it, would recover his money twice. It should, however, be added that where a mortgagee, or one having a lien, insures his own interest in property, a payment of a loss to him by the insurers does not discharge the debt for which the mortgage or the lien is the security. Where, however, the mortgagee is trustee for the mortgagor, as where the mortgagor causes insurance to be made on the premises, payable to the mortgagee in case of loss, or where the mortgagee effects insurance at the expense of the mortgagor, with his consent, payment by the insurers would go in discharge of the debt.

A policy usually adds to the description of the property, "lost or not lost." This phrase makes the policy retrospective; and attaches it to the property if that existed when, by the terms of the policy, the insurance began, whether this were for a voyage or for a certain time, although it had ceased to exist when the policy was made.

An interest which was originally valid and sufficient cannot be defeated by that which threatens, but does not complete an actual divestment of the interest in property; therefore, not by attachment, or an execution for debt; nor by liability to seizure by government for forfeiture; nor a right in the seller to stop the goods *in transitu;* nor capture; because, after all these, the property may remain in or return to the insured. But sale on execution, actual seizure by government and forfeiture, stoppage *in transitu*, or condemnation by court as lawful prize, divest the property, and therefore discharge the insurance.

The insurance never attaches if the interest is illegal originally; and it is discharged if the interest becomes illegal subsequent to the insurance, or if an illegal use of the subject-matter of the insurance is intended. And any act is illegal which is prohibited by law, or made subject to a penalty. The effect would be the same if the policy opposes distinctly the principles and the purposes of law, as wagering policies do.

Mariners, or mates, are not permitted by the law-merchant to insure their wages, but may insure goods on board, bought with their wages; and one legally interested in the wages of a mariner may insure them; as one to whom they are assigned by order or otherwise. A master may insure his wages, commissions, or any profit he may make out of his privilege.

An unexecuted intention of illegality, if not distinctly acted upon, will not defeat a policy; nor a remote and incidental illegality; as smuggling stores on board, or not having on board the provisions required by law; nor a change from legality to illegality, which cannot be proved or supposed to be known to the insured. And upon these questions, the court, if the case be balanced, will incline to the side of legality. A cargo may be insured which is itself lawful, but was purchased with the proceeds of an illegal voyage.

If a severable part of a cargo or a voyage is legal, it may be insured, by itself, although other parts are illegal. But if a part of the whole property insured together is illegal, this avoids the whole policy.

A compliance with foreign registry laws is not necessary, and with our own probably is not, to sustain the insurance of an actual owner in good faith

Freight is a common subject of insurance. In common conversation, this word means sometimes the cargo carried, and sometimes the earnings of the ship by carrying the cargo. The latter is the meaning in mercantile law, and especially in the law of insurance. It includes in insurance law the money to be paid to the owner of a ship by the shipper of goods, and also the earnings of an owner by carrying his own goods; and the amount to be paid to the owner by the hirer of his ship, and also the profits of such hirer, either by carrying his own goods, or by carrying, for pay, the goods of others.

An interest in freight begins as soon as the voyage is determined upon, and the ship is actually ready for sea, and goods are on board, or are ready to be put on board, or are promised to be put on board by a contract which binds the owner of the goods to put them on board, for that voyage.

If a ship is insured on a voyage which is to consist of many passages, and sails without cargo, but a cargo is ready for her, or contracted for her at the first port she is to reach and sail from, the owner has an insurable interest in the freight from the day on which she sails from his home port.

If one makes advances towards the freight he is to pay, and this is to be repaid to him by the ship-owner if the freight is not earned, the advancer has no insurable interest in what he advances; but if he is to lose it, without repayment, if the ship be lost or the freight not earned, he has an insurable interest.

SECTION IV.

PRIOR INSURANCE.

OUR marine policies generally provide for this by a claus to the effect that the insurer shall be liable only for so much of the property as a prior insurance shall not cover. The second covers what the first leaves, the third what the second leaves, and so on; and as soon as the whole value of the property is covered, the remainder of that policy, and the subsequent policies, have no effect. This priority relates not merely to the date of the instrument, but to the actual time of insurance. Sometimes the policy provides that the insured shall recover only the same proportion of the whole loss which the amount insured in that policy is of the whole amount insured by all the policies on the whole property.

Where no provision is made in the policies as to priority, all are insurers alike, but all together only of the whole value at risk. The insured, therefore, may recover of any one insurer at his election, and this insurer may compel the others to contribute to him in proportion to their respective insurances.

Insurances may be not successive, but simultaneous, and then no clause as to prior policies has any application, for then no policy is *prior* to another, and all the insurances are liable *pro rata.* They are simultaneous, if said to be so in the policies, which is common; or if made on the same day, and bearing the same date, and there is no evidence as to which was, in fact, first made.

SECTION V.

DOUBLE INSURANCE AND RE-INSURANCE.

If there be double insurance, either simultaneously or by successive policies in which priority of insurance is not provided for, we have seen that all are insurers, and liable each in proportion; thus, if all the policies cover twice the value of the property insured, each policy is valid for one-half of its own amount.

But there is no double insurance, unless all the policies insure the very same subject-matter, against the same risks, and, taken together, exceed its whole value.

Many insurances of the same subject-matter, for the benefit of different parties, do not constitute double insurance.

Re-insurance is lawful; for whoever insures another has assumed a risk against which he may cause himself to be insured. This is often done by companies who wish to close their accounts, to lessen their risks, or get rid of some special risk.

SECTION VI.

THE MEMORANDUM.

THIS word is retained, because the English policies have attached to them a note or memorandum providing that the insurers shall not be liable for any loss upon certain articles therein enumerated (and thence called memorandum articles), unless it be total, or greater than a certain percentage. In our policies, the same thing is provided for, but usually by a clause contained in the body or in the margin of the policy. The general purpose is to guard against a liability for injuries which may very probably not arise from maritime peril, because the articles are in themselves perishable; but which injuries it might not be easy to refer to the precise causes which produced them Thus, grain, fish, hides, fruit, etc., are very liable to be somewhat injured on the voyage, and if there has been bad weather, or a greater leak than usual, it is impossible to say whether these goods have lost value from their own decay, or from a peril of the sea. It is therefore provided, that the insurers shall not pay unless there be a total loss by a sea-peril, which ends all question, or so large a loss as ten or twenty per cent.; for this could hardly happen without visible and certain cause. And then, if the cause was shown to be not a peril insured against, the insurers would not be liable.

The perishable articles thus excepted, and the percentage of loss necessary to charge the insurers, vary very much at different times and in different States.

SECTION VII.

EXPRESS WARRANTIES.

A STIPULATION or agreement *in the policy*, that a certain thing shall be or shall not be, is an express warranty. And every warranty must be, if not strictly, at least accurately complied with. Nor is it an excuse that the thing is not material; or that the breach was not intended, or not known; or that it was caused by an agent of the insured. A warranty is equally effectual if written upon a separate paper, but referred to in the policy itself as a warranty. And the direct assertion or allegation of a fact may constitute a warranty.

If the breach of the warranty exists at the commencement of the risk, it avoids the whole policy, although the warranty was complied with afterwards and before a loss, and although all other risks were distinct from that to which the warranty related. Thus, if a vessel is warranted "coppered," and she is not coppered, and is lost by the ignition of cotton in the hold. Here, the breach of the warranty, that is, the want of the copper, has nothing to do with the loss; but the insurers would be discharged.

If the breach occur after the risk begins, and before a loss, and is not caused or continued by the fault of the insured, the insurers are held; and so they are if a compliance with the warranty becomes illegal after the policy attaches, and it is therefore broken.

The usual subjects of express warranty are, first, the ownership of the property, which is chiefly important as it secures the neutrality, or freedom from war-risks, of the property insured. The neutrality of the ship and of the cargo must be proved by the ship's having on board all the usual and regular documents. False papers may, however, be carried for commercial purposes, either when leave is given by the insurers, or when it is permitted by a known and established usage.

If neutrality is warranted, it must be maintained by a strict adherence to all the rules and usages of a neutral trade or employment. Without warranty, every neutral ship is bound to respect a blockade which legally exists by reason of the presence of an armed force sufficient to preserve it, and of which the neutral has knowledge.

The second most common express warranty is that of the time of the ship's sailing. She sails when she weighs anchor or casts off her fastenings, and gets under way, if the intention be to proceed at once to sea without further delay. She must have been actually under way. But if she moves with the intention of prosecuting her voyage, this is sufficient. But if not entirely ready for sea, she has not sailed by merely moving down the harbor. If she moves, being ready and intended for sea, but is afterwards accidentally and compulsorily delayed, this is a sailing. Nor is the warranty complied with by leaving a place to return to it immediately; or by going from one port of the coast or island, which she is warranted to leave, to another. If the ship is warranted "in such a harbor or port," or "where the ship now is," this means at the time of the insurance. And "warranted in port" means the port of insurance, unless another port is expressed or distinctly indicated.

SECTION VIII.

IMPLIED WARRANTIES.

THE most important of these warranties—which the law implies, or makes for the parties without their saying anything about them, although they may, if they please, make them for themselves—is that of *seaworthiness*. By this is meant, that every person who asks to be insured upon his ship, by the mere force and operation of law, warrants that she is, in every respect,—hull, sails, rigging, officers, crew, provisions, implements, papers, and the like,—competent to enter upon and prosecute that voyage at the time proposed, and encounter safely the common dangers of the sea. If this warranty be not complied with, the policy does not attach, whether the breach be known or not, unless there is some peculiar clause in the policy waiving this objection.

If the ship be seaworthy and the policy attaches, no subsequent breach discharges the insurers from their liability for a loss previous to the breach. Even if the policy does not attach at the beginning of the voyage, if the unseaworthiness be capable of prompt and effectual remedy, and be soon and entirely remedied, the policy may then attach. If the insurance is "at and from" a port, there is no implied warranty in the nature of a condition precedent to the attaching of the policy, that the vessel shall be then seaworthy in the sense of being fit for sea, and it is sufficient if she is portworthy. But the policy is avoided if she goes to sea in an unseaworthy condition. The general rule is, that, if unseaworthiness prevents the policy from attaching at the proper commencement of the *risk*, the contract becomes a nullity.

If she becomes unseaworthy in the course of the voyage, from a peril insufficient to produce it in a sound vessel, this may be evidence of inherent weakness and original unseaworthiness; and then the policy never attached. But if originally seaworthy, and by any accident made otherwise, the policy continues to attach until she can be restored to a seaworthy condition by reasonable endeavors. And the general rule is, that she must be so restored as soon as she can be. It is the duty of the master to repair her as soon as he can; by the aid of another ship if that may be, but if otherwise, not to keep her at sea if she can readily make a port where she can be made seaworthy; and not to leave that port until she is seaworthy. It is the rule that a ship must not leave a port in an unseaworthy condition, if she could there be made seaworthy; if she does, the insurers are no longer held. But their liability may be, not destroyed, but only suspended, if the seaworthiness be cured at the next port, especially if that be not a distant port.

There cannot possibly be a definite and universal standard for seaworthiness. The ship must be fit for her voyage or for her place. But a coasting schooner needs one kind of fitness, a freighting ship to Europe another, a whaling ship another, a ship insured only while in port another. So as to the crew, or provisions, or papers, or a pilot, or certain furniture, as a chronometer or the like; or the kind of rigging or sails. In all these respects, much depends upon the existing and established usage. There is, perhaps, no better test than this; the ship must have all those things, and in such quantity and of such quality as the law requires, provided there is any positive rule of law affecting them; and otherwise such as would be deemed requisite according to the common consent and usage of persons engaged in that trade. And the reason for this rule is, that this is exactly what the insurers have a right to expect, and if the insured intend anything less, or the insurers desire anything more, it should be the subject of special bargain.

If a policy be intended to attach when a ship is at sea, the ship must be seaworthy in that sense and in that way in which a ship of her declared age, size, employment, and character, after being at sea for that time, under ordinary circumstances, ought to be in, and may be expected to be in by all concerned. The standard of seaworthiness is to be found from the usage and understanding of merchants, at the place where the ship belongs, and not at that where the ship is insured.

SECTION IX.

REPRESENTATION AND CONCEALMENT.

If there be an affirmation or denial of any fact, or an allegation which would lead the mind to a conclusion, whether made orally or in writing, or by exhibition of any written or printed paper, or by a mere inference from the words of the policy, before the making of the policy, or at the making, and the same be false, and tend to procure for him who makes it the bargain, or some advantage in the bargain, it is a *misrepresentation.* And it is the same thing, whether it refers to a subject concerning which some representations were necessary, or otherwise.

Concealment is the suppression of a fact not known to the other party, referring to the pending bargain, and material thereto.

A misrepresentation or a concealment discharges the insurers. To have this effect, it must continue until the risk begins, and then be material.

It is no defence that it was innocent, and arose from inadvertence or misapprehension, because the legal obligation of a full and true statement is absolute; nor that the insurers were not influenced by it, if it were wilfully made with intention to deceive.

If it be in its nature temporary, and begins after the risk begins, and ends before a loss happens, the insurers are not discharged. And if it relate to an entirely separate subject-matter of insurance, as the goods only, and has no effect upon the risk as to the rest, as the ship, for example, it discharge the insurers only as to that part. Ignorance is never an excuse, if it be wilful and intentional. If one says only he believes so and so, the fact of his belief in good faith is sufficient for him. But if he says that is true of which he does not know whether it be true or false, and it is actually false, it is the same misrepresentation as if he knew it to be false. If a statement relate to the future, a future compliance or fulfilment is necessary.

Any statement in reply to a distinct inquiry will be deemed material; because the question implies that the insurer deems it material. On the other hand, the insured is not bound to communicate any mere expectation or hope or fear; but only all the facts material to the risk.

SECTION X.

WHAT THINGS SHOULD BE COMMUNICATED.

NOT only ascertained facts should be stated by the insured, but intelligence, and mere rumors, if of importance to the risk; and it has been held that intelligence known to his clerks would be generally presumed to be known to him; and it is no defence, that the things have been found to be false. It has been held that an agent was bound to state that his directions were sent him by express; because this indicated an emergency. If the voyage proposed would violate a foreign law not generally known, this should be stated.

It is impossible to give any other criterion to determine what should be communicated than the rule that everything should be stated which might reasonably be considered in estimating the risk. And so everything of any kind which the insurer might reasonably wish to take into consideration in estimating the value of the risk which he is invited to assume.

The question, however, being one of concealment as it affects the estimation of the risk, it is obvious that the insured need not state to the insurer things which he already knows; and by the same reason, he is not bound to state things which the insurer ought to know, and might be supposed to know.

If either party says to the other so much as should put the other upon inquiry in reference to a matter about which inquiry is easy and would lead to information, and the other party makes no inquiry, his ignorance is his own fault, and he must bear the consequences of it.

An intention, which, if carried into effect, would discharge the insurers, as, for example, an intention to deviate, need not be stated, unless the intention itself can be shown to affect the risk. So a past damage to the property need not be stated, unless it affects its present probability of safety.

A false statement that other insurers have taken the risk on such or such terms is a misrepresentation; but a false statement by the insured that he thinks they would take it on such terms is not one, for of this the insurers can judge for themselves.

Every statement or representation will be construed rationally, and so as to include all just and reasonable inferences. A substantial compliance with it will be sufficient; and a literal compliance which is not a substantial one will not be sufficient.

SECTION XI.

THE PREMIUM.

This is undoubtedly due when the contract of insurance is completed; but in practice in this country, the premium in marine insurance is usually paid by premium note on time, which is given at or soon after the delivery of the policy. If the policy acknowledge the receipt of the premium, and it is not paid, this receipt would be no bar to an action for it.

The premium is not due if the risk is not incurred; whether this be caused by the non-sailing of the ship; or by one insured on goods not having goods on board; or not so much cargo as he is insured for; or by any error or falsity in the description which prevents the policy from attaching.

If the premium be not earned, or not wholly earned, it must be returned in whole or in part by the insurers if it have been paid; and not charged in account with the insured, if it be unpaid.

The premium may be partially earned; and then there must be a part return only. As if the voyage consist of several passages, or of "out and home" passages, and these are not connected by the policy as one entire risk; or if the insured has some goods at risk, but not all which he intended to insure.

It is, however, an invariable rule, that if the whole risk attaches at all, that is, if there be a time, however short, during which the insurers might, in case of loss from a sea-peril, be called on for the whole amount they insure, there is to be no return of premium.

In this country, insurers usually retain one-half of one per cent. of a returnable policy. And our policies contain a clause permitting the insurers to set off the premium due against a loss, whether the note be signed by the insured or by another person.

SECTION XII.

THE DESCRIPTION OF THE PROPERTY INSURED.

The description must be such as will distinctly identify the property insured, as by quantity, marks, and numbers, or a reference to the fact of shipment, or the time of shipment, or the voyage, or the consignee; or in some similar and satisfactory way; and no mere mistake in a name, or otherwise, vitiates the description if it leaves it sufficiently certain. If different shipments come within the policy, the insured may attach it to either by his declaration, which may be done after the loss, provided this appears to have been the intention of the parties. "Cargo," "goods on board," "merchandise," mean much the same thing; and do not attach to ornaments, clothing, or the like, owned by persons on board and not intended for commercial purposes. "Property" is the word of widest and almost unlimited meaning. "Ship" or "vessel" includes all that belongs to it at the time,—even sextants or chronometers belonging to the ship-owner, and by him appropriated to the navigation of the ship. So it includes all additions or repairs made during the insurance.

The phrase "a return cargo" will generally apply to a homeward cargo of the party insured in the same ship, however it be procured; but the phrases "proceeds" and "returns" are generally regarded as limited to a return cargo bought by means of the outward cargo. And neither of these, or any similar phrases, will apply to the same cargo brought back again, unless it can be shown, by the usage, or other admissible evidence, that this was the intention of the parties.

The nature of the interest of the insured need not be specified, unless peculiar circumstances, closely connecting this interest with the risk, make this necessary. But either a mortgagor or a mortgagee, a charterer, an assignee, a consignee, a trustee, or a carrier, may insure as on his own property, and without describing the exact nature of his interest.

SECTION XIII.

THE PERILS COVERED BY THE POLICY.

The policy enumerates, as the causes of loss against which it insures, Perils of the Sea, Fire, Piracy, Theft, Barratry, Capture, Arrests, and Detentions; and "all other perils," by which is meant, by construction of law, all other perils of a like kind with those enumerated.

It is a universal rule, that the insurers are liable only for *extraordinary* risks. The very meaning of "seaworthiness," which the insured warrants, is that the ship is competent to encounter with safety all ordinary perils. If she be lost or injured, and the loss evidently arose from an ordinary peril, as from common weather, or the common force of the waves, the insurers are not liable, because the ship should be able to withstand these assaults. And if the loss be unexplained, and no extraordinary peril be shown or indicated, this fact would raise a very strong presumption of unseaworthiness. As, for example, if the vessel went down while sailing with favorable winds on a calm ocean.

It is a universal rule, that the insurers are never liable for a loss which is caused by the quality of the thing lost. This rule applies to the ship, her rigging and appurtenances, when worn out by age or hard service. But its most frequent application is to perishable goods. The memorandum already spoken of provides for this in some degree. But the insurers are liable for the loss of no article of merchandise whatever, if that loss were caused by the inherent qualities or tendencies of the article, *unless* these qualities or tendencies were excited to action and made destructive by a peril insured against. Thus, if hemp rots from spontaneous fermentation, which cannot occur if it be dry, the insurers are not liable if the loss arose from the dampness which the hemp had when laden on board; but if the vessel were strained by tempest, and her seams opened, and the hemp was in this way wet, and then rotted, they are liable.

The insurers may take upon themselves whatever risks they choose to assume. And express clauses in a policy, or the uniform and established usage and construction of policies, may throw upon them, as in fact it does, a very large liability to the owner or shipper for the effects of the misconduct—wilful or otherwise—of the master and crew. The clause relating to barratry, to be spoken of presently, is of this kind.

If the cargo is damaged through the fault of the master or crew, the shipper of the cargo has a remedy against the owner of the ship. But this does not necessarily discharge the insurers. If, however, he enforces his claim against them, he is bound to transfer to them his claim against the ship-owner. For the insurers of the cargo, by paying a loss thereon, put themselves, as it were, in the position of the shippers, and acquire their rights.

SECTION XIV.

PERILS OF THE SEA.

By this phrase is meant all the perils incident to navigation; and especially those arising from the wind and weather, the state of the ocean, and its rocks and shores. But it will be remembered that the insurers take upon themselves only so many of these as are "extraordinary." Hence, destruction by worms or by rats is not such a peril as the insurers are liable for, because it is not extraordinary. It seems now settled that *fire* is not included among "perils of the sea," or "perils of the river." But it is usually mentioned in the policy, as one of the risks insured against.

If a vessel be not heard from, it will be supposed, after a reasonable interval, that she has perished; but the law has not determined the length of this interval with any exactness. The presumption of law will be, that she was lost by an extraordinary peril of the sea, and, of course, the insurers will be answerable for her. But this presumption may be rebutted by any sufficient evidence, as of unseaworthiness, or any other probable cause of loss.

SECTION XV.

COLLISION.

COLLISION is a peril of the sea which may deserve especial notice. In the chapter on Shipping, it has been stated, that, where a collision is caused by the fault of one of the ships, the ship in fault sustains the whole loss; that is, it must bear its own loss, and must indemnify the other ship for the injury that ship sustains. It has been held that the insurers of the ship in fault are liable for the whole of this loss, because it is all caused by collision, which is a peril of the sea. But the Supreme Court of the United States have recently decided that the insurers are not held for more than the loss *directly* sustained by the ship they insure, that is, *not* for the amount that ship pays to the other ship for injury done to it.

SECTION XVI.

FIRE.

THIS peril also must come under the common rule, that the insurers will not be held unless it be caused by something extraordinary, and not belonging to the inherent qualities of the thing which takes fire.

The insurers would be held for any direct and immediate consequences of the fire; and for loss caused by the endeavor to extinguish it. It is, indeed, a general rule, that the insurers are liable for the loss or injury which is the natural, direct, and proximate effect of any peril insured against, although the loss itself may be only the effect of a preceding loss; as, if a part of the cargo was burned up, and another part was injured by water used to arrest the fire, the insurers would be liable for both parts.

SECTION XVII.

PIRACY, ROBBERY, OR THEFT.

THERE can be no piracy or robbery, without violence; but this is not necessary to constitute the crime of theft. Piracy and robbery are most usually committed by strangers to the ship; they may, however, be committed by the crew; and the insurers are answerable for such a loss, unless it arose from the fault of the owner. Our policies now usually have the phrase "assailing thieves." This excludes theft without violence, and all theft by those lawfully on board the vessel, as a part of the ship's company. If, after shipwreck, the property is stolen, the insurers are liable, and might be so if there were no insurance against theft, if this was a direct effect of the wrecking.

SECTION XVIII.

BARRATRY.

This word means any wrongful act of the master, officers, or crew, as any fraud, cheat, or trick done by them, or either of them, against the owner. If he directed the act, or consented to it, or by his negligence or default caused it,—whether he were actual owner, or apparent or temporary owner by hiring the vessel,—it is no barratry. But it is not necessary that it should be done with an intention hostile to him. For an act otherwise barratrous would be none the less so because the committer of it supposed it would be for the advantage of the owner.

The master being appointed by the owner, and controlled by him, many policies provide that they do not insure against barratry, *if the insured be the owner of the ship*. The purpose of this is obvious; it is to prevent an insurance of the owner against the acts of one for whom the owner ought to hold himself responsible. The effect of the clause is to limit the insurance against barratry to goods shipped by one who is not owner of the vessel.

As a general rule, the insurers are liable for the misconduct of the crew, when all usual and reasonable precautions have been taken by the owner, and his servant, the master, to prevent such misconduct.

SECTION XIX.

CAPTURE, ARREST, AND DETENTION.

The phrase which refers to these perils is usually in these words: "Against all captures at sea, or arrests, or detentions of all kings, princes, and people." Almost every word of this sentence has been the subject of litigation or of discussion. The provision has been held to apply not only to captures, arrests, or detentions by public enemies, by foreign belligerent powers, but to those by the very government of which the insured is himself a subject, *unless* the same be for a breach of the law by the insured. Then the insurers are not liable, because they never are for the consequence of an illegal act of the insured. By th "people" are understood the sovereign power ot a State, whatever be its form of government. "Capture" and 'seizure" are equivalent; they differ from "detention" in this respect: the two former words mean a taking with intent to keep; the latter, a taking with intent to restore the property. "Arrest" is any taking possession of the property for any hostile or judicial purpose.

SECTION XX.

THE GENERAL CLAUSE.

THIS clause has a very limited operation. We have already remarked, that it is usually restricted to perils of a like kind with those already enumerated; and although this phrase has been declared to be substantial and material, it might be difficult to hold an insurer liable under this clause, when he would not have been liable under some one of the enumerated perils.

SECTION XXI.

PROHIBITED TRADE.

THIS is not the same with contraband trade (which belongs to war), although the words are sometimes used as if they were synonymous. It is perfectly lawful for a ship to break through a blockade if it can, or to carry arms or munitions of war to a belligerent. This would be contraband trade. And it is perfectly lawful for the State whose enemy is thus aided, to catch seize, and condemn the vessel that does this, if it can. The vessel takes upon itself this risk; and it is not covered by a common policy, unless the purpose is disclosed and permitted. Prohibited trade belongs to a time of peace. It is either trade prohibited by the State to which the ship belongs,—and then it is wholly illegal, and the insurers are not only not answerable under a general policy for a loss occasioned by this breach of law, but an express bargain to that effect would itself be illegal and void; or it may be trade prohibited only by a foreign State. And then it is not an illegal act in the vessel by whose sovereign it is not prohibited. The intention to incur this extra risk should be communicated; because the insurers should be enabled to take it into consideration. But in practice, our policies generally, if not universally, except expressly the risks arising from prohibited trade.

The parties may always agree to add such risks, or except such, as they choose.

SECTION XXII.

DEVIATION.

As the insurers are entitled to know, either from information given them, or from the known course of the trade, what risks they assume, it is obvious that the insured have no right to change those risks, and that, if they do, the insurers are not held to the new risk. Such a change of risk is called a deviation; it certainly discharges the insurers; and although the word originally meant in law what it means commonly, a departure from the proper course of the voyage, it now means, in the law of insurance, any departure from or change of the risks insured against. And it discharges the insurers, although it does not increase the risk, as they have a right to stand by the exact bargain they have made. There may be a deviation while the ship is in port; or where the insurance is on time, and no voyage is indicated. And a very slight deviation may suffice to discharge the underwriters.

But no deviation discharges the insurers, or, in the language of the law, no change or risk is a deviation, unless it be voluntary, that is, not if there was or seemed to be a sufficient necessity for it.

The proper course—a departure from which is a deviation—is always the usual course, provided there be a usage; for a master is not bound to follow their track wherever one or two have gone before, but must be allowed his own reasonable discretion.

If there be no course so well established that every one would be expected to follow it, the master must go to his destined port in the most natural, direct, safe, and advantageous way.

An extraordinary and unnecessary protraction of a voyage would be a deviation. But the mere length of the voyage, without other evidence, would not prove this.

Liberty policies, so called, are often made. That is, the insured is expressly permitted to do certain things, which, without such permission, would constitute a deviation. And a large proportion of the cases on the subject of deviation have arisen under these policies. Most of the phrases commonly used have been construed by the courts; and generally quite strictly. A liberty to "enter" a port, or "touch" at a place, permits a ship to go in and come out, but it permits little delay, because for delay the word "stay" or "remain" is necessary.

It is certain that no permission is necessary foı any change of course or risk that is made for the saving of life, or even for the purpose of helping the distressed. Always provided, however, that the change of course, or the delay, was no greater and no longer continued than this cause for it, actually and rationally considered, required. It is, however, equally well settled, that a change of course or of risk for the purpose of saving property is a deviation not justified by its cause. A delay for the purpose of towing a vessel is certainly a deviation, unless there are persons on board the vessel which is towed, and they can be saved in no other way.

Sometimes it is intended that a ship shall visit many ports, and even go backwards and forwards, at places between the port from which she sails and that at which the voyage is finally to terminate. Such purposes as this are sometimes provided for by a policy on time; and sometimes by express permission to go to and trade at certain ports.

If permission be given to enter and stop at a dozen different ports, the vessel may omit any of them, or the whole, but must visit in the proper order all to which she does go. She cannot go back and forth.

The substitution of a new voyage for that agreed upon is of course a deviation, and one that can seldom or never be justified by any necessity, so as to carry the insurer's liability on the new voyage. If an entirely new voyage is intended, and a vessel sails upon it, but in the same direction in which she would have gone on the insured voyages, the policy never attaches, and the premium is never earned, because the ship never sails on the insured voyage. But if the ship is intended to pursue the insured voyage to its proper terminus, but at a certain point of the voyage to deviate by going into another port, there is no deviation until that point is reached, and the deviation actually begun; because it is certain that no mere intention to deviate discharges the insurers until it is carried into execution; and they are liable for a loss happening before the deviation.

SECTION XXIII.

THE TERMINI OF THE VOYAGE, AND OF THE RISK.

THESE must be distinctly stated, whether they be termini of time or place. A policy from ——— to ———, or from B to ———, or from ——— to B, would be void. Nor would it be any better if the termini were named with apparent distinctness, but in such wise as to mean nothing, or nothing sufficiently certain.

A policy takes effect from its date, if the bargain was then complete, although not delivered until afterwards. And it may be remarked, that, if there be an unreasonable delay in the sailing of the vessel, the policy never attaches, for the bargain is considered as annulled.

A policy on a vessel "at" such a place attaches when she is there in safety. But if there were a policy "to" a place, and another was made out between the same parties "at," or "at and from," the same place, the law would presume that the parties intended that the second policy should attach whenever the first one ceased by the arrival of the ship, without reference to the condition of the ship or her peril at the time.

A policy on goods attaches to them at the time when it would have attached to the vessel had she been insured. The extent which should be given to the meaning of the word "port" is sometimes a question of some difficulty; but in general all places are within a port which belong to it by mercantile usage and acceptance, although not within the same municipal or legal precinct.

"At and from" covers a vessel in a port, as well as after she leaves it. "From" only covers the vessel *after* she gets under way. "At and from," applied to goods, does not cover them in the port when they are on shore and warehoused, nor until they become subject to marine risk, by being water-borne. They are, however, covered, not only when they reach the ship, but as soon as they are put on board of boats or lighters, or any other usual water conveyance to the ship. And if insured to a port, they continue covered after they leave the ship by any usual conveyance for the shore, until they are safely landed. The word "at," applied to an island or a coast, may embrace all the ports therein, and cover the ship while sailing from one to another. "To a port and a market," covers a voyage to the port, and thence to every place to which, by mercantile usage or reasonable construction, a ship may go thence in search of a market; and even to return to that port, if honestly with intent to learn there where a market could be found.

If the insurance be to "a port of discharge," this does not terminate if the vessel goes to a port for inquiry, or for needful refreshment or repair. If it be "a final port of discharge," the insurance ceases upon such parts of the cargo as are left at one port or another, and continues on the ship, and on all the goods on board, until arrival at the port where they will be finally discharged.

It is generally provided in time policies, that, if the vessel be at sea at the expiration of the time agreed on, the risk shall continue until her arrival at a port of discharge, or at her port of destination. If then, before the expiration of the time, she is actually at sea, or has broken ground for the voyage, or if, when the time expires, she is in a port of necessity or restraint, she is considered at sea, but not otherwise.

The English policies and our own contain a provision that the insurance continues on the ship "until she shall be arrived and moored twenty-four hours in safety;" and on the goods until they be "landed," or "safely landed."

Under this clause, the ship is insured until moored in safety, so far as the perils insured against are concerned, but not against the peculiar and local dangers of the port, or the possibility that a tempest there might injure her when moored; for these dangers continue to exist as long as she stays there, and the liability of the insurers would never terminate. If she enters the harbor, and, before she is moored, is blown off, or ordered into quarantine, she is insured until this delay ceases and she is safely moored in port. And if before or within the twenty-four hours a dangerous storm begins, but does no damage to her until after the expiration of the twenty-four hours, the risk has terminated, and the insurers are not liable.

SECTION XXIV.

TOTAL LOSS AND ABANDONMENT.

The law of insurance recognizes an actual total loss, and also a constructive total loss. It is actual when the whole property passes away, as by submersion or destruction by fire. It is a constructive total loss when the ship or goods are partially destroyed, and the law permits the insured to abandon the salvage or whatever is saved, to the insurers, and claim from them a total loss. By "abandonment" is meant, in insurance law, the transferring of the property insured, or what is left of it, to the insurers. The word is used, because originally the insured gave up, renounced, or abandoned the property, saying to the insurers, we will have nothing more to do with it, and you may do with it what you like. And the word is still always used, although now it means a transfer. And in the law of insurance, a constructive total loss is a partial loss made total by an exercise of the right of abandonment. That is, the actual loss took from the insured a part, and the abandonment took the rest, and so they have lost all. A constructive total loss is sometimes called a "technical" total loss.

The abandonment, we say, transfers all that remains of the property to the insurers. If nothing remains, or if that which remains has no value, there need be no abandonment, and this is an actual total loss.

The insured never need make an abandonment if he chooses not to do so. And if from such choice or neglect he makes no abandonment, his claim against the insurers is still valid; but it is a different claim from that which it would have been if he had abandoned, because it is now to be settled as a partial loss, of which we shall speak hereafter. For it is the purpose and effect of an abandonment to convert an actual partial loss into a constructive total loss. And if he makes an abandonment when he has no right to make it, such abandonment is wholly inoperative, unless the insurers choose to accept it; but if they accept it, they must settle the loss as a total loss.

The topics in relation to this subject which we will consider are:—1. The necessity of abandonment. 2. The right of abandonment. 3. The exercise of this right. 4. The acceptance of the abandonment. 5. The effect of the abandonment, or of the absence of abandonment.

1. OF THE NECESSITY OF ABANDONMENT.—It is said, that if a ship be completely wrecked and reduced to "a mere congeries of planks and iron," or if she has not been heard from for a sufficiently long time, there need be no abandonment, and the insured may claim as for a total loss, without one. In either case, or any other case, if the insurance pay a total loss, they are entitled to whatever shall come to hand of the property insured. And it is usual, and we think more proper, to abandon in both of these cases.

2. OF THE RIGHT OF ABANDONMENT.—The insured cannot convert every partial loss, however small, into a total loss, by abandonment, transferring the damaged property to the insurers. But by a rule which is nearly universal in this country, and not unknown abroad, if the damage by a peril insured against exceed one-half of the value of the property insured,—whether ship, goods, or freight,—he may abandon the property to the insurers, and claim as for a total loss. But if the vessel actually reaches her destined port, she cannot be abandoned, although the repairs would cost more than half of her value.

When we speak in another section of partial loss, it will be seen that, by the established usage of this country, an allowance of "one-third, new for old," is always made. This means, that if a new thing were given for an old one because the old one had been injured, the insurer would be more than indemnified. The sails, for example, might be so new that they had lost little of their value; or so old, that they were of no value. To avoid inquiring into each case, usage has adopted, as a fair average to apply to all cases, that the thing injured has lost one-third of its value. When it is replaced by repairs, the insured therefore loses one-third of the cost of repair, and the insurers pay two-thirds.

Now our policies provide that there shall be no total loss by abandonment unless the injury exceed fifty per cent. when "estimated as for a partial loss;" that is, one-third off. Consequently, the repairs necessary to restore the vessel to a sound condition must amount to more than seventy-five per cent. of her value when repaired (one-third of which, twenty-five per cent., being cast off, leaves fifty per cent.) before there can be an abandonment, which the insurers are bound to accept, and settle the loss as a total loss.

The valuation in the policy, if there be one, generally determines the value on which this estimate is to be made. In New York and in Massachusetts, this seems to be distinctly held; but the courts of the United States and of some of our States, incline to say that, whether the policy be valued or open, the value of the ship, the loss of one-half of which authorizes abandonment, is the actual value of the ship at the time the loss occurs, and that this value is to be proved by proper evidence.

A loss by jettison, by salvage, by general average contribution, by wages of sailors paid while they assisted in making the repairs, should be included in the fifty per cent. If the insured have lost a part of his goods by jettison, and have a claim for contribution which is not yet paid, the whole of his loss is to be included to make up the fifty per cent., and the insurers take the claim to contribution by abandonment. Thus, if his loss be by jettison of eight-tenths of his goods, it is eighty per cent., and if he has a claim for contribution in general average for thirty-five per cent., this does not reduce his loss to forty-five per cent., so that he cannot abandon; but he may call his loss eighty per cent. and abandon, and by the abandonment transfer to the insurers his claim for thirty-five per cent. The expense of repairs is to be taken at the place where actually made, or where they must have been made, if made at all.

If a sale be lawfully made by the master, under the authority from necessity which we have considered in the chapter on the Law of Shipping, this is a total loss, and the insured must account for the proceeds.

3. OF THE EXERCISE OF THE RIGHT OF ABANDONMENT.—As an abandonment has the effect of an absolute transfer of the property to the insurers, and is intended for this purpose, it is obvious that it cannot be made by one who is not possessed of such title to the property, or such interest therein, as would enable him to make a valid transfer.

There is no especial form or method of abandonment. But the proper and safe way is to do it in writing, and to use the word "abandon," or "abandonment," although other words of entirely equivalent meaning might suffice. It must be distinct and unequivocal, and state, at least in a general way, the grounds of the abandonment.

The following would be a good and sufficient form:

(101.)

Abandonment.

NEW YORK, January 9, 1900, 10 o'clock A. M.

I have this day learned that my (*or the*) ship (*or whatever the vessel is*), insured by you (*or of which you have insured the cargo or freight or profits, as the case may be*), has been wrecked on her voyage from to (*or has met with such or such a disaster, describing it generally*), and that she now lies at (*or that said cargo or what remains of it is now at*). And I do now and hereby abandon to you the ship, with her cargo and freight (*or whichever of these interests was the subject of insurance*), and shall claim payment of you as for a total loss.

To the Insurance Company.

(*Signature.*)

If the abandonment be deficient in form, the insurers will waive any objection of this kind if they call for further proof, and otherwise act as if the abandonment were altogether sufficient.

The insured may abandon at any time when the ship by a peril insured, is taken for an uncertain period from the master's control, and the voyage is broken up and cannot be renewed, unless at a cost which of itself gives this right.

The existence of the right depends upon the actual state of facts at the time, and not upon the supposed facts. Nothing, however, gives the right of instant abandonment, without a faithful endeavor of the master to find, if he can, and use, if he can, some means of deliverance and safety. But if, when delivered and restored to the master or owner, her damage amounts to more than half of her value, estimated as above stated, "as a partial loss," she may then be abandoned. If the precise voyage insured be broken up by a peril insured against, this justifies an abandonment, although the vessel might be put in condition to pursue a different voyage or render a different service.

As the insurers, who take the salvage (or saved) property by abandonment, have a right to every possible opportunity to make the most of it, it follows as an invariable and universal rule, that the insured *must* make an abandonment immediately after he receives the intelligence which justifies it; and if he does not, he will be regarded as having elected not to abandon, and no subsequent abandonment will have any effect.

The abandonment may be made on information of any kind, if it be entitled to weight and credence. So even a general rumor, without specific intelligence to the insured, will authorize an abandonment, if the rumor seems to be well grounded and altogether credible.

4. OF THE ACCEPTANCE OF THE ABANDONMENT.—As there is no especial form or method of making an abandonment, so there is no regular and established form of accepting an abandonment. Indeed, an acceptance, merely as such, or in so many words, is seldom made. And as the insurer's accepting is not necessary to give full effect to an abandonment which has been made on proper grounds, and in the right way and time, it is seldom asked for.

The acceptance of the abandonment may be inferred from words, or acts. The question has arisen whether it could be inferred from mere silence; and, in general, it cannot. "An insurer is not bound," says Mr. Justice Story, "to signify his acceptance. If he says nothing, and does nothing, the proper conclusion is, that he does not mean to accept it."

The rule may be stated thus. If the insurer, with a sufficient knowledge of the facts, says or does that which induces an honest insured to believe that he has accepted the abandonment, and will pay the loss, and to act on that belief, it is an acceptance, and is so far binding on the insurer. But if he neither says nor does what ought to produce this belief, then he is at liberty to say and prove if he can that the insured had no right to make an abandonment, and that the claim is only one for a partial loss.

5. Of the Effect of Abandonment.—We regard it is an ancient, reasonable, and well-established rule, that, if insurers pay as for a total loss, this payment entitles them to full possession of all that remains of the property insured, and also of all rights, claims, or interests which the insured has in or to or in respect of the property lost, and which, if he valued or enforced them himself, would, if added to the amount paid by the insurers, give him a double indemnity. Hence, if the insured has lost his goods by jettison, and has a claim for a general average contribution, and the insurers pay him for all his goods, they stand in his place, and acquire that claim for contribution which the loss of the goods gave him. And we should, very generally at least, extend this rule to the claim which a mortgagee has on the mortgage for his debt. That is, if the insurers pay for the loss of the property which secures the debt, they acquire, to the extent of their payment, the mortgagee's claim against the debtor.

By the abandonment, both the owner and the master become to some extent, the trustees and agents of the insurers, in respect to the property abandoned; and are bound to act, in relation to it, with care and honesty. Still, if the property, after abandonment, or after a loss for which there is to be an abandonment, be further lost or wasted, by the bad faith or neglect of the master, or of the consignee of the owner, while they continue to act as such, this loss must be made up by the owner, because, although they are, in a certain sense, agents of the insured, they are then agents of the owner, and he is responsible for them to the insured.

Goods are totally lost if destroyed, or if so injured as to have little or no value for the purpose for which they are intended; or if the voyage upon which the insurance on the goods was effected is entirely broken up. But a mere delay gives no right of abandonment. And, in addition to all this, the rule which permits abandonment if more than fifty per cent. be lost, of which we have already spoken, is applicable to goods, in this country; subject, however, to the important qualification, that it does not apply if any substantial portion of the goods arrive at their destination uninjured; or if the goods are insured "free from average." And the rule of abandonment, salvage, and transfer to the insurers, is the same in relation to goods as to the ship.

If there be many several shipments all insured, there may be a total loss of one, a partial loss of another, and no loss of a third.

SECTION XXV.

GENERAL AVERAGE.

THIS subject belongs primarily to the law of shipping, and is treated of in the chapter on the Law of Shipping. It comes within the scope of the law of insurance only when any of the property which is lost or saved is insured.

If an owner of property is insured, and other property is sacrificed to save the insured property from a peril common to it and to the sacrificed property, the insured property must pay such indemnity to the owner of the sacrificed property as will make them suffer alike. And the amount thus paid or contributed by the insured property is a loss by a sea-peril, for which the insurers are liable.

On the one hand, the insurers of the sacrificed property are under an obligation to pay for the loss thus made or incurred voluntarily, because it was not only the right, but the duty, of the master and crew to destroy a part rather than let the whole perish. It was therefore a loss by a peril of the sea, although purposely caused for the benefit of others; and the insurer must pay for it.

On the other hand, the owners of the property sacrificed, acquire by its sacrifice a claim for contribution and indemnity; and if the insurers pay them for their loss, they acquire their claim for contribution. And this they take advantage of, in some cases, by deducting it from the amount they pay, and in other cases by first paying all the loss, and then collecting all the contribution for their own benefit. We have already seen that the insurers cannot deduct the contribution for the purpose of bringing the loss below fifty per cent., and thereby preventing an abandonment.

SECTION XXVI.

PARTIAL LOSS.

A PARTIAL loss is simply a loss of a part, and not of the whole. The principal questions relating to it arise out of the rule of one-third off, new for old, which has been already spoken of. We repeat the rule, with the reason of it. A ship sails to-day with new copper. Another sails with her copper nearly worn out. Both meet with peril which requires new coppering. The first is new coppered, and the insurers pay for it, and the insured gains nothing, because the copper on her was worth as much as it is now. The second is also coppered, and the insurers pay for it. But this ship gains nearly the whole value of the copper put on, because the old copper was worth very little. Now the whole purpose and principle of the law of insurance is to *indemnify* the insured, or make his loss good, and no more. Formerly they tried to do it by finding out in each case how much the old materials had lost of their value. But this was found so difficult, that it was agreed upon by merchants and insurers to *average* all the cases, and consider that all old materials had lost one-third of their value. And the rule is found to work well in practice.

The first effect of this rule is, that the thing or the part lost or injured, whether it be new or old, worn out or not worn at all, must be replaced or repaired in adaptation and conformity with the vessel, in the same way in which it would be if she were properly repaired at the owner's port, by his orders.

This third part is generally deducted from dockage, moving the ship, and similar expenses, provided they are incidental to the main purpose of repair.

The value of the old materials should be deducted from the expense of repair, before the third "new for old" is taken off. If a sea-peril makes it necessary to recopper a vessel, and the cost will be $9,000, and her old copper is worth $3,000, we should say that this should be deducted, leaving $6,000, for two-thirds of which only ($4,000), one-third being off, new for old, the insurers would be liable. The other way would be, to say the cost of repair is $9,000, of which the insurers would pay two-thirds ("one-third off"), or $6,000; and then the insurers would be entitled to the $3,000 which her old copper brings. Then the loss of the insurers would be only $6,000 less $3,000, or $3,000, instead of $4,000, which the insurers would lose on the first way. Insurers have tried to make the second way the law; but the first way is now pretty well established.

If an owner effects insurance on a part only of the value of the property insured,—as if for $5,000 on a ship valued at $10,000,—he is insured for half, and is his own insurer for the other half, and he recovers in the same proportion from the insurers in case of a partial loss. Thus, if there be a partial loss of sails and rigging, or of repairs, amounting, after one third is deducted, to $2,000, one-half of this is the loss of the insurers, and they pay it to him, and one-half is his own loss.

The insurer takes no part of the risk of the market, and his liability is the same whether that rises or falls, although this may make a great difference as to the amount lost by the insured. What goods have lost from their original invoice value is the amount which the insurer pays. Thus, if he insures $10,000 on goods of which that is the original value, and they are so far damaged by a sea-peril, that at the port of discharge they bring, or are worth, only half of what they would have brought if they had not been damaged, the insurers are liable for $5,000, or that half, although the goods thus damaged may bring in the market of arrival the whole of their invoice cost or more. And if they bring but a quarter of it, the insurers pay no more than one-half, because the rest of the loss is caused by the falling market.

If the goods have sustained damage or loss by leakage, or by breakage, or by natural decay, or from inherent defect in quality,—that is, not by a sea-peril,—before the partial loss occurs, a proportional deduction should be made from the partial loss, as the insurers are liable only for the injury resulting from that loss, and not for any part of that which already existed when the loss took place, or which has occurred since from causes against which they did not insure.

CHAPTER XXVII.

FIRE INSURANCE.

SECTION I.

THE USUAL SUBJECT AND FORM OF THIS INSURANCE.

THIS kind of insurance is sometimes made to indemnify against the loss by fire of ships in port; more often of warehouses, and mercantile property stored in them; or of personal property in stores or factories, in dwelling-houses or barns, as merchandise, furniture, books and plate, or pictures, or live stock. But by far the most common application of this mode of insurance is to dwelling-houses and other buildings.

Like marine insurance, it may be effected by any individual who is capable of making a legal contract. In fact, however, it is always, or nearly always, in this country, and we suppose elsewhere, made by companies.

There are stock companies, in which certain persons own the capital and take all the profits by way of dividends; and mutual companies, in which every one who is insured becomes thereby a member, and the net profits, or a certain proportion of them, are divided among all the members in such manner as the charter or by-laws of the company may direct. Sometimes both kinds are united, in which case there is a capital stock provided, as a permanent guaranty fund, over and above the premiums received, and a certain part or proportion of the net profits is paid by way of dividend upon this fund, and the residue divided among the insured.

Of late years the number of mutual fire-insurance companies has greatly increased in this country, and much the largest amount of insurance against fire is effected by them. The principal reason for this is, undoubtedly, their greater cheapness; the premiums required by them being, in general, much less than in the stock offices. For example, if the insurance is effected for seven years, which is a common period, an amount or percentage is charged, about the same as that charged by the stock companies, or a little more. Only a small part of this is taken in cash; for the rest a premium note or bond is given, promising to pay whatever part of the amount may be needed for losses which shall occur during the period for which the note is given. More than this, therefore, the insured cannot be bound to pay, and it frequently happens that no assessment whatever is demanded; and sometimes, where the company is well established and does a large business upon sound principles, a part of the money paid by him is refunded when the insurance expires, or credited to him on the renewal of the policy, if such be his wish.

The disadvantage of these mutual companies is, that the premiums paid and premium notes constitute the whole capital or fund out of which losses are to be paid for. To make this more secure, it is provided by the charter of some companies, that they shall have a lien on the land itself on which any insured building stands, to the amount of the premium. But while this adds very much to the trustworthiness of the premium notes, and so to the availability of the capital, it is, with some persons, an objection, that their land is thus subjected to a lien or incumbrance.

There is another point of difference which recommends the stock company rather than the mutual company. It is that the stock company will generally insure more nearly the full value of the property insured; while the mutual companies are generally restrained by their charters from insuring more than a certain proportion, namely, from one-half to three-fourths of the assessed value of the property. It would follow, therefore, that one insured by a mutual company cannot be fully indemnified against loss by fire; and may not be quite so certain of getting the indemnity he bargains for as if he were insured by a stock company.

The method and operation of fire insurance have become quite uniform throughout this country; and any company may appeal to the usage of other companies to answer questions which have arisen under its own policy; only, however, within certain rules, and under some well-defined restrictions.

In the first place, usage may be resorted to for the purpose of explaining that which needs explanation, but never to contradict that which is clearly expressed in the contract. And no usage can be admitted even to explain a contract, unless the usage be so well established, and so well known, that it may reasonably be supposed that the parties entered into the contract with reference to it. And not only the terms of the contract must be duly regarded, but those of the charter or act of incorporation.

In regard to the execution of a fire policy, and what is necessary to constitute such execution, we say that delivery is not strictly necessary, and a signed memorandum may be sufficient, or, indeed, an oral bargain only, and that this insurance may be effected by correspondence, and that the contract is completed when there is a proposition and assent, as we have already said in reference to marine insurance.

It has been held in an action on a fire policy, as doubtless it would be on a marine policy, that a memorandum made on the application book of the company by the president, and signed by him, was not binding, where the party to be insured wished the policy to be delayed until a different adjustment of the terms could be settled, and after some delay was notified by the company to call and settle the business, or the company would not be bound, and he did not call; because there was here no consummated agreement. So, too, a subsequent adoption or ratification of a policy made by an agent is equivalent, either in a fire or marine policy, to the making originally of the contract.

SECTION II.

THE CONSTRUCTION OF POLICIES AGAINST FIRE.

It is sufficient if the words of the policy describe the persons, the location, and the property, with so much distinctness that the court and jury have no difficulty in determining their identity with a certainty which prevents any real and substantial

In the construction of this as of other contracts, the intention of the parties is a very important and influential guide; but it must be the intention *as expressed;* for otherwise, a contract which was not made would be substituted for that which was made; and evidence from without the contract would be permitted to vary and to contradict it. Thus, where stock in trade, household furniture, linen, wearing-apparel, and plate were insured in a policy, the court held that the term "linen" must be confined to "household linen," and would not include linen drapery goods purchased on speculation. In a case where the policy required that the houses, buildings, or other places where goods are deposited and kept, shall be truly and accurately described, and the place was described as the dwelling-house of the insured, whereas he occupied only one room in it, as a lodger, this description was held sufficient.

It was held in another case, that the insurance by an innkeeper against fire of his "interest in the inn and offices," does not cover the loss of profits during the repair of the damaged premises. And in another, the words "stock in trade," when used in a policy of insurance in reference to the business of a mechanic, as a baker, were held to include not only the materials used by him, but the tools, fixtures, and implements necessary for the carrying on of his business; and the words in question were held to have a broader application to the business of mechanics than to that of merchants.

A policy upon wearing-apparel, household furniture, and the stock of a grocery, covers linen sheets and shirts actually laid in for family use, and such as were laid in for sale or traffic in the usual way, in the store; but not such as, being smuggled, were concealed and intended for secret sale.

There is no material difference in respect to mistake, or the correction of it, between fire-policies and marine-policies; and the law on this subject in relation to the latter has already been stated. And the same remark may be extended to the rule respecting the admission, as a part of the contract, of a memorandum on the back of the policy, or attached to it by a wafer, and neither referred to in the policy itself, nor signed by the insurer.

It is a general rule with our mutual insurance companies, that every one who is insured becomes a member of the company.

And it follows, necessarily, that every insured party is bound by all the laws and rules of the company, as by laws and rules of his own making.

The mutual fire-insurance companies, by a law or rule which is perhaps universal, require that an application shall be made in writing; and this written application is after a peculiar form, prescribed by the rules. It always contains certain definite statements, which relate to those matters which affect the risk of fire importantly. In each form of application sundry questions are put, which are quite numerous and specific, and are those which experience has suggested as best calculated to elicit all the information needed by the insurers for the purpose of estimating accurately the value of the risk they undertake. Specific answers must be given to all these questions. And this application, with all these statements, questions, and answers, is expressly referred to in the policy, and made a part of the contract.

It is common to state in the printed part of the formal application, that it is made on such and such conditions; and these usually follow those statements which are deemed the most material in estimating the risk. These would be considered as express conditions, and therefore the substantial truth of all of them is a *condition precedent* to any right of indemnity in the insured party. By the legal phrase *condition precedent*, is meant a condition which must be fully complied with before the contract can take effect. Hence, if any of these statements are false, the policy will be void.

Sometimes there is no distinct application in writing, but the policy itself states the facts relied upon. For this purpose it contains many blanks, which are filled up according to the circumstances of each case. It may happen that what is written in these places may be inconsistent with what is printed; and then it is a general rule that what is written prevails, as that is more immediately and specifically the act of the parties, and may be supposed to express their precise purpose better than the printed phrases which were prepared without especial reference to any particular case. But this rule would not be applied where it would obviously operate injustice.

Policies of fire insurance, especially of mutual companies, often contain a scale of premiums, as calculated upon different classes of buildings, of stocks in trade, or other property, in conformity with what is thought to be the greater or less risk of fire in each case. This is a matter of special importance; and if a statement were made by an applicant which put his building or property into a class of which the risk and premium were less than for the class to which the building or property actually belonged, and in that way an insurance was effected at such less premium, the policy would undoubtedly be void, even if the false statement were made innocently.

When certain trades or occupations, or certain uses of buildings, or kinds and classes of property, are enumerated as "hazardous," or otherwise specified as peculiarly exposed to risk, the rule, *The expression of one thing excludes what is not expressed*, is applied, and sometimes with severity. This is better illustrated by marine insurance. Thus, in a case in New York, precisely in point, dried fish were enumerated in the memorandum clause as free from average, and "all other articles perishable in their own nature." It was held that the naming of one description of fish implied that other fish were not intended; and that the subsequent words, "all other articles perishable in their own nature," were not applicable, and did not repel this implication. The same rule would be applied, for the same reason, and in the same way, to cases of fire insurance.

If the printed conditions represent one class of buildings, or goods, or property, as more hazardous than another, it would not be competent for the insured, whose property was of that kind, to prove by other testimony that it was not more hazardous in fact. Moreover, a description of the property insured, as it is a description *for* a contract on time, is held to amount to an agreement that the property shall continue within the class where it is put, or at least shall not enter into another that is declared to be more hazardous, during the operation of the policy. There must, however, be a rational, and perhaps a liberal, construction of this rule. Thus, it does not apply where a single article, or one or two, are kept in a store as a part of the stock of goods, although that article, as cotton in bales, is among those enumerated as hazardous. So if the "storing of spirituous liquors" is prohibited, the keeping of wine or brandy in a private house for consumption, or even for sale by retail to boarders, would not discharge the insurers.

In New York it was held that where oils and turpentine, which were classed among hazardous or extra-hazardous articles, were introduced for the purpose of repairing and painting the dwelling insured, and the dwelling was burned while being so repaired, the insurers were liable. But if the building is generally appropriated to a more hazardous occupation than the proposals or the policy indicate, or if the jury find that the introduction of these goods materially increased the actual risk, evidence would be received as to the intention of the parties to the contract. And the true meaning of the contract and the intent of the parties would be considered. Thus, where the "storing" of certain goods was prohibited, as "hazardous," it was held that the having a pipe or two of such articles in the cellar, from which smaller vessels in the store were replenished, did not come within the meaning of the word "storing" in the policy, any more than would the keeping of such articles for home consumption in a dwelling-house insured by a similar policy. So a description of a house as "at present occupied as a dwelling-house, but to be hereafter occupied as a tavern, and privileged as such," is only permission that it should be a tavern, and creates no obligation to occupy and keep it as a tavern on the part of the insured. But if the language is, "to be occupied as so or so, but *not*" in some other certain way, this restriction is a part of the bargain; and, if the building is occupied in the way prohibited, the insurers are discharged.

So if the premises are described as a "private residence," the insurance is not avoided by the fact that the occupants moved out of the house, leaving it vacant, and not the "residence" of any one, unless the jury find that the risk was thereby materially increased. But where the property was represented as a "tavern barn," and the insured permitted its occupation as a livery-stable, the policy was held to be discharged, although the keeper of the livery-stable was removable at the pleasure of the insured. Where a building insured by a company was represented, at the time of effecting the insurance, as connected with another building on one side only, and before the loss happened it became connected on two sides, the policy was held not to be avoided unless the risk thereby became greater.

The general subject of alterations of property under insurance against fire is not without difficulty. On the whole, however, mere alterations, although expensive and important, do not necessarily and of themselves avoid the insurance or discharge the insurers; but they have this effect, if they are found by the jury to increase the risk materially; or if they are specifically prohibited in the policy.

Still other questions may arise where material alterations are made, all of which are not easily disposed of. The following are instances. Suppose one gets his dwelling-house insured for seven years, truly describing it as having a shingled roof. After two or three years he determines to take off the shingles, but says nothing to the insurers about it. If he now puts on slates, or a metallic covering which does not require soldering, he does not increase the risk; nor is the work of putting on the new covering hazardous, and we see no grounds for its having any effect on the policy. But suppose the new metallic covering is secured by soldering. This is certainly a hazardous operation. And if the building takes fire in consequence of this operation, the insurers are certainly discharged.

If the operation is conducted safely through, and the work is entirely finished, we consider it clear that this greater hazard for a time has no effect whatever on the policy after that time, and after all the greater hazard has expired. But let us suppose that while this operation is going forward, and the house is thereby certainly exposed to an increase of risk, the house is set on fire by an incendiary,—without the slightest reference to this alteration,—and burns down. It is not, perhaps, settled, either by authority or practice, whether the insurers are or are not discharged. I am, however, of opinion that the principles of insurance would lead to the conclusion, that, if the house be burned from a perfectly independent cause, during an increase of risk incurred for good cause and in good faith, the insurers are not thereby discharged. It is, however, certain, that it is always prudent to obtain the consent of the insurers to any proposed alteration. If such consent be asked, and refused, we do not see that the insurers stand on any better footing, or the insured on any worse one; and if the alterations are made and a loss occurs, we should say that the insurers would not, generally at least, be discharged because of their refusal, unless they would have been discharged if the alteration had been made without their knowledge. For if they have a right to object or refuse, it could only be because the contract in effect prohibited this alteration; and then their refusal was not wanted for their defence. And if they have no right to refuse, they can acquire no rights by the refusal.

If the alteration be of a permanent character, and causes a material increase of the danger of fire, then it is a substantial breach of contract; and we should hold that the insurers were discharged as soon as the alteration was made, and indeed as soon as the making of it, or preparations for it, as scaffolding or carpenter's work, materially increased the risk. And they are discharged equally, whether the fire be caused by the alteration, or by the work done, or by some wholly independent matter.

The insured may make reasonable repairs without especial leave, and the insurers are liable, although the fire take place while the repairs are going on; and even if it be caused by the repairs.

It may be added, that our fire-policies now in use frequently give the insured the right of keeping the property in repair. The failure of the insured to repair a defect in the building, arising after the contract is made, does not prevent the insured from recovering unless he was guilty of gross negligence.

SECTION III.

THE INTEREST OF THE INSURED.

Any legal interest is sufficient. And if it be equitable in the sense that a court of equity will recognize and protect it, that is sufficient; but a merely moral or expectant interest is not enough. So one has an insurable interest in a house placed on another's land with that other's consent, but not if placed there without license or shadow of title. So, too, one who has made only an oral bargain with another to purchase the other's house, cannot insure it; but if there be a valid contract in law, or if by writing or by part performance it is enforceable in a court of equity, the purchaser may insure. So, if a debtor assign his property to pay his debts, he has an insurable interest in it until the debts are paid, or until the property be sold.

A partner may have an insurable interest in a building purchased with partnership funds, although it stands upon land owned by the other partner. A mortgagor may insure the whole value of his property, even after the possession has passed to the mortgagee, if the equity of redemption be not wholly gone. So he may if his equity of redemption is seized on execution, or even sold, so long as he may still redeem. And in case of loss he recovers the whole value of the building, if he be insured on it to that amount.

A mortgagor and a mortgagee may both insure the same property, and neither need specify his interest, but simply call it his property. The mortgagee has an interest only equal to his debt, and founded upon it; and if the debt be paid, the interest ceases, and the policy is discharged; and he can recover no more than the amount of his debt.

It has been held, that if a mortgagor is bound by his contract with the mortgagee to keep the premises insured for the benefit of the mortgagee, and does keep them insured in his own name, the mortgagee has an equitable interest in or lien upon the proceeds of the policy.

One who holds property only in right of his wife may insure the property, even if his wife be only a joint tenant. And a tenant for years, or from year to year, may insure his interest, but would recover only the value of his interest, and not the value of the whole property.

We have said that, generally, any one having any legal interest in property may insure it as his own. But there is one important exception to or modification of this rule. By the charters of many of our mutual insurance companies, the company has a lien, to the amount of the premium note, on all property insured. It is obvious, therefore, that no such description can be given, or no such language used, as would induce the company to suppose they had a lien when they could not have one, or would in any way deceive them as to the validity or value of their lien. In all such cases all incumbrances must be stated, and the title or interest of the insured fully stated in all those particulars in which it affects the lien.

A trustee, agent, or consignee may insure against fire, as he may against marine loss. Generally, the consignee is not bound to insure against fire, but may, at his discretion. He may insure, expressly, his own interest in them for advances, or the owner's interest. It has been held that a consignee may, by virtue of his implied interest and authority, insure, in his own name, goods in his possession *against fire*, to their full value, and recover for the benefit of the owner. And if the interest be not expressed, the policy will be construed as not covering the interest of the owners, if, upon a fair construction of the words and facts, it seems to have been the intention of the parties only to secure the consignee's interest. And an insurance against fire upon merchandise in a warehouse, "for account of whom it may concern," protects only such interests as were intended to be insured at the time of effecting the insurance.

It is now common for a commission merchant to cover in one policy, in his own name, all the goods of the various owners who have consigned goods to him. It has been held, that the words "goods held on commission," in fire-policies, have an effect equivalent to the words "for whom it may concern," in marine-policies.

A person having a lien on a building under a State law has an insurable interest in the building.

A consignee of goods, sent to him, but not received, may insure his own interest in them. So, any bailee (which means any person to whom property has been delivered for any purpose) who has a legal interest in the chattels which he holds, although this be temporary and qualified, may insure the goods against fire. Thus a common carrier by land, who has a lien on the goods, and is answerable for them if lost by fire (unless it be caused by the act of God or the public enemy), may insure the goods to their full value against fire.

The insurers must know whom they insure, for they may have a choice of persons, and it is important to them to know whether they are to depend on the care and honesty of this man or that man. The insured must so describe the owner as not to deceive them on this point, and so he must the kind of owner ship. Thus, if he aver an entire interest in himself, he cannot support this by showing a joint interest with another; and if in his action he declare the latter, proof of the former is not sufficient.

So, too, there must be actual authority to make the insurance. This may be express, or implied, in some cases, as it seems to be implied with the consignee, or the carrier, and perhaps, generally, with any one who has an actual possession of, interest in, and lien on, the property. But a tenant in common does not derive from his cotenancy authority to insure for his cotenant; nor could a master of a ship or a ship's husband, merely as such, insure the owner's interest against fire.

SECTION IV.

DOUBLE INSURANCE.

By this, the party originally insured becomes again insured. If, by a double insurance, the insured could protect himself over and over again, he might recover many indemnities for one loss. This cannot be permitted, not only because it is opposed to the first principles of insurance, but because it would tempt to fraud and make it very easy.

In this country, fire-policies usually contain express and exact provisions on this subject. They vary somewhat, but, generally, they require that any other insurance must be stated by the insured, and indorsed on the policy; and it is a frequent condition, that each office shall in that case pay only a ratable proportion of a loss; and it is often added, that, if such other insurance be not so stated and indorsed, the insured shall not recover on the policy. And it has been held that such a condition applies to a subsequent as well as to a prior insurance; or to an insurance of any part of the property covered by the other policy. Nor will a court of equity relieve, if sufficient notice and indorsement have not been made. But it has been held that a valid notice might be given to an agent of the company, who was authorized to receive applications and survey property proposed for insurance.

In some instances the charter of the company provides that any policy made by it shall be avoided by any double insurance of which notice is not given, and to which the consent of the company is not obtained, and expressed by their indorsement in the policy. But this would not apply to a non-notice by an insured of an insurance effected by the seller on the house which the insured had bought, if this policy were not assigned to the buyer.

SECTION V.

WARRANTY AND REPRESENTATION.

A WARRANTY is a part of the contract; it must be distinctly expressed, and written either in or on the policy, or on a paper attached to the policy, or, as has been held, on a separate paper distinctly referred to and described as a part of the policy. Then it operates as a condition precedent; that is, as a condition of the policy, which if it be not performed, the policy never takes effect; if it be not performed, there is no valid contract; nor can the non-performance be helped by evidence that the thing warranted was less material than was supposed, or, indeed, not material.

It may be a warranty of the present time, or, as it is called, affirmative, or of the future, and then it is promissory. And it may be, although of the present and affirmative, a continuing warranty, rendering the policy liable to avoidance by a non-continuance of the thing which is warranted to exist. Whether it is thus continuing or not must evidently be determined by the nature of the thing warranted. A warranty that the roof of a house is slated, or that there are only so many fire-places or stoves, would, generally, at least, be regarded as continuing; but a warranty that the building was five hundred feet from any other building, would not cause the avoidance of the policy if a neighbor should afterwards put up a house within one hundred feet, without any act or privity of the insured.

We have seen, that statements made on a separate paper may be so referred to as to make them a part of the policy. And it is usual to refer in this way to the written application of the insured, and to all the written statements, descriptions, and answers to questions, which he makes for the purpose of obtaining insurance. But a fair and rational, or, in some cases, a liberal construction, will be given to such statements.

It is quite certain that the word warranty need not be used, if the language is such to import unequivocally the same meaning. And an indorsement made upon the policy before it is executed may take effect as a part of it.

A statement may be introduced into the policy itself, and be construed not as any warranty, but merely as a license or permission of the insurers that premises may be occupied in a certain way, or some other fact occur without prejudice to the insurance.

A representation, in the law of insurance, differs from a warranty, in that it is not a part of the contract. If made after the signing of the policy or the completion of the contract, it cannot of course affect it. If made before the contract, and with a view to effecting insurance, it is no part of the contract; but if it be fraudulent, it makes the contract void. And if it be false, and known to be false by him who makes it, it is his fraud. To have this effect, however, it must be material; and there is no better test or standard for this than the question, whether the contract would have been made, and in its present form or on its actual terms, if this statement had not been made and believed by the insurers. If the answer is, that the contract would not have been made if this statement had not been made, it is material; otherwise, not. The general rule is, that the statements in the application on a separate sheet, have the effect only of representations, and do not avoid the policy unless void in a material point, or unless the policy makes them specially a part of itself, and gives them the effect of warranties. A representation may be more certainly and precisely proved if in writing; but it will have its whole force and effect if only oral.

In some instances, by the terms of the policies, any mis representations or concealments void the policy. And it is held that the parties have a right to make such a bargain, and that it is binding upon them; and the effect of it would seem to be to give to representations the force and influence of warranties.

There seems to be this difference between marine-policies and fire-policies. In the former, a material misrepresentation avoids the policy, although innocently made; in the latter it has this effect only when it is fraudulent. This distinction seems to rest upon the greater capability, and therefore greater obligation, of the insurers against fire to acquaint themselves fully with all the particulars which enter into the risk. For they may do this either by the survey and examination of an agent, or by specific and minute inquiries. If a *warranty* is broken, however innocently, it avoids all policies, whether material or not. And this difference between a *warranty* and a *representation* is very important.

Concealment is the converse of misrepresentation. The insured is bound to state all that he knows himself, and all that it imports the insurer to know, for the purpose of estimating accurately the risk he assumes. A suppression of the truth has the same effect as an expression of what is false. And the rule as to materiality and as to a substantial compliance is the same.

Even the rumor of an attempt to set fire to a neighboring building should be communicated; because the insurer should be informed of any unusual fact, or any circumstance relating to the building materially enhancing the risk.

Insurers must be understood as knowing all those matters of common information that are as much within their reach as in that of the insured; and these need not be especially stated. But any special circumstance, as a great number of fires in the neighborhood, and the probability or belief that incendiaries were at work, should certainly be communicated; and silence on such a point—especially if the place of business of the insurers was at a considerable distance from the premises—would operate as a fraud, and avoid the policy. And any questions asked must be answered, and all answers must be as full and precise as the question requires. If there were a provision in the policy that a certain fact, if existing, must be stated, silence in reference to it would avoid the policy, however immaterial the fact. Concealment in an answer to a specific question can seldom or never be justified by showing that it was not material. Thus, in general, nothing need be said about title. But if it be inquired about, full and accurate answers must be made.

Where the insurance company has, by the terms of the policy, a lien upon or interest in the premises insured, to secure the premium note, here it is obvious that any concealment of incumbrance or defect of title would operate as a fraud, and defeat the policy. But in all such cases it is probable that specific questions are put respecting the estate and title of the insured.

It is often required that all buildings standing within a certain distance of the property insured shall be stated; but this might not always be considered as applicable to personal and movable property. Still, an insurance of chattels, described as in a certain place or building, would be held to amount to a warranty that they should remain there; or rather it would not cover them if removed into another place or building, unless, by some appropriate phraseology, the parties expressed their intention that the insured was to be protected as to this property wherever it might be situated. It is not uncommon to insure goods that are in course of transit, against fire; but then it is usual to name the places from which and to which the goods are passing.

SECTION VI.

THE RISK INCURRED BY THE INSURERS.

At the time of the insurance, the property must be in existence, and not on fire, and not at that moment exposed to a dangerous fire in the immediate neighborhood; because the insurance assumes that no unusual risk exists at that time.

The risk taken is that of fire. And therefore the insurers are not chargeable if the property be destroyed or injured by the indirect effect of excessive heat; or by any effect which stops short of ignition or combustion, when this heat is purposely applied, and the injury is caused by the negligence of the person in charge of it. Where, however, an extraordinary fire occurs, the insurers are clearly liable for the direct effects of it, as where furniture or pictures are injured by the heat, although they do not actually ignite.

And they are liable for the injury from water used to extinguish the fire; and for injury to or loss of goods caused by their removal from immediate danger of fire; but not if removed from a mere apprehension from a distant fire, even if it be reasonable; and not if the loss or injury might have been avoided by even so much care as is usually given in times of such excitement and confusion.

In some instances, the policies require that the insured should use all possible diligence to preserve their goods; and such a clause would strengthen the claim for injury caused by an endeavor to save them by removal. So the insurers are liable for injury or loss sustained by the blowing up of buildings to arrest the progress of a fire.

Lightning is not fire; and if property be destroyed by lightning, the insurers are not liable, unless there was also ignition; or unless the policy expressly insures against lightning.

An explosion caused by gunpowder is a loss by fire; not so is an explosion caused by steam.

Whether, when the negligence of the insured or his servants is to be considered as the sole or direct cause of the fire or loss, the insurers can be held, has been somewhat considered. And as this is the most common and universal danger, and the very one which induces most persons to insure, there has been some disposition to say that no measure or kind of mere negligence can operate as a defence. And in effect this is almost the law. But if the loss be caused by negligence of the insured himself, of so extreme and gross a character that it is hardly possible to avoid the conclusion of fraud, the defence might be a good one, although there were no direct proof of fraud. That the fire was caused by the insanity of the insured should be no defence.

SECTION VII.

VALUATION.

Valuation, precisely as it is understood in a marine policy, seldom enters into a fire-policy,—never, perhaps, in a policy made by any of those mutual companies who now do a very large part of the insurance of this country. And quite seldom is a building valued when insured by a stock company. If a loss happens, whether it be total or partial, the insurers are bound to pay only so much of the sum insured as will indemnify the assured. But, as care is always taken—and sometimes required by law—not to insure upon any house its whole value, it seldom happens, and, if the proper previous precautions are taken, should never happen, that any question of value arises in a case of a total destruction of a building by fire.

But mutual companies are usually forbidden by their charter to insure more than a certain proportion of the value of a building; and this requires a valuation in the policy, which is conclusive, for some purposes, against both parties. Of course, the insurers can never be held to pay more than the sum insured. And if their charter or by-laws permit a company to insure only a certain proportion of the value, as three-fourths,—on the one hand, if the company insure more than that proportion, as

$3,500 on property valued at $4,000, they are held to pay only $3,000, and the assured cannot show that the building was really worth more than $4,000; and, on the other hand, the valuation, if not fraudulent, is conclusive against the insurers if the building is destroyed, and they cannot show, in defence, that the building was worth less.

I know nothing to prevent the parties from making a valued policy, if they see fit to do so, although this has been questioned. It is not uncommon for companies who insure chattels,—as plate, pictures, statuary, books, or the like,—to agree on what shall be the value in case of loss.

Sometimes the policy reserves to the insurers the right to have the valuation made anew by evidence, in case of loss. Then if a jury find a less valuation, the insurers pay the same proportion of the new value which they had insured of the former valuation.

The value which the insurers or goods must pay is their value at the time of the loss. And it has been held, that a fair sale at auction, with due precaution, will be taken to settle that value after the fire, provided the insurers have reasonable notice or knowledge that the auction is to take place.

The valuation determines the amount which the insurers must pay only in case of total destruction. If the building is only injured by fire, the insurers may either repair it, or pay the cost of repairing it.

SECTION VIII.

ALIENATION.

Policies against fire are personal contracts between the insured and the insurers, and do not pass to any other party, without the express consent of the insurers.

It is essential to the validity and efficacy of this contract, that the insured have an interest in the property when he is insured, and also when the loss takes place; for otherwise it is not his loss, and he can have no claim for indemnity. If, therefore, he alienates the whole of his interest in the property before the loss, he has no claim; and if he alienates a part, retaining a partial interest, he has only a partial and proportionate claim.

After a loss has occurred, the right of the insured to indemnity is vested and fixed; and this right may be assigned for value, so as to give an equitable claim to the assignee, without the consent of the insurers.

Policies against fire contain a provision that an assignment of the property, or of the policy, shall avoid the policy. So, generally, it is hardly worth while to inquire what right an assignee, without consent, would acquire at common law, or in equity, where there is no such provision.

A dissolution of the partnership before loss, and a division of the goods, so that each partner owned distinct portions, was held to be in violation of a condition against "any transfer or change of title in the property insured."

A conveyance by one insured, intended to secure a debt, will be treated in a court of equity as a mortgage, and therefore it does not terminate the interest of the insured. A contract to convey is not an alienation. Nor is a conditional sale, where the condition must precede the sale, and is not yet performed. Nor is a mortgage, not even after breach, and perhaps entry for a breach, and not until foreclosure. Nor selling and *immediately* taking back. Sometimes alienation by mortgage is directly prohibited.

If several estates are insured in one policy, and one or more are aliened (or conveyed away), the policy is void as to those only which are aliened. If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of the other owners, will avoid the policy for only so much as is thus transferred.

In practice, care should be taken to have all such transfers regularly made and notified, and the consent of the insurer obtained, fully authorized, and duly indorsed or certified, and all the rules or usages of the insurers in this respect complied with.

SECTION IX.

NOTICE AND PROOF.

WHERE the policy requires a certificate of the loss, the production of it is a condition precedent to any claim for payment.

And it must be such a certificate as is required; but a substantial compliance with its requirements is sufficient. So, too, if the notice is to be given *forthwith*, there must be no unreasonable or unnecessary delay. And all the circumstances of the case are considered, in determining whether there was or was not due diligence. Where a certificate is required to be furnished "as soon as possible," it is still sufficient if it be furnished within a reasonable time. But where the fire took place in November, and the account of loss was not furnished till the March following, it was held not to be a compliance with the conditions. Generally, this is a question for the jury.

In fire-policies, as the premises may be supposed always open to the inspection of the agents of the insurers, a general notice of the fire will be enough.

SECTION X.

ADJUSTMENT AND LOSS.

INSURERS against fire are not held to pay for loss of profits, gains of business, or other indirect and remote consequences of a loss by fire. We do not know, however, why profits may not be expressly insured against fire, where it is not forbidden by, or inconsistent with, the charter of the insurers.

There is one wide difference between the principle of adjustment of a marine policy and of a fire-policy. In the former, if a proportion only of the value is insured, the insured is considered as his own insurer for the residue, and only an equal proportion of the loss is paid. Thus, if, on a ship valued at $10,000, $5,000 be insured, and there is a loss of one-half, the insurers pay only one-half of the sum they insure, just as if some other insurer had insured the other $5,000. But in a fire-policy, the insurers pay in all cases the whole amount which is lost by fire, provided only that it does not exceed the amount which they insure.

Most of the fire-policies used in this country give the insurers the right of rebuilding or repairing premises destroyed or injured by fire, instead of paying the amount of the loss. If, under this power, the insurers rebuild the house insured, at a less cost than the amount they insure, this does not exhaust their liability; they are now insurers of the new building for the difference between its cost and the amount they have insured. And if the new building burns down, or is injured while the policy continues, the insured may claim so much as, added to the cost already incurred, shall equal the sum for which he was insured.

It may be important to add, that, under our common mutual policies, the insured will also be liable for assessments for losses after the destruction of his building by fire, during the whole term of the policy.

There is no rule in fire-insurance similar to that which makes a deduction, in marine-insurance, of one-third, new for old. Still, the jury, to whom the whole question of damages is given, are to inquire into the greater value of a proposed new building, or of a repaired building, and assess only such damages as shall give the insured complete indemnity.

Where insurers reserved a right to replace articles destroyed, if the insured refused to permit them to examine and inventory the goods that they might judge what it was expedient for them to do, such conduct on the part of the insured would be evidence to the jury of great weight, to prove an overstatement of loss.

I have not thought it would be useful to give Forms of various policies. Applicants never make them, as they are always furnished by the insurance companies; each one having its own form, and using no other. But the following Forms, of immediate notice of loss, of a later and fuller statement under oath, with a magistrate's certificate, and assignments of policies, may be found useful. They must be all adapted, in practice, to the peculiar circumstances of each case.

(102.)

To the................Fire-Insurance Company.

Take Notice, That on the   day of   inst. (or last) a fire broke out in the building No.   in   Street, in the city of   (*or otherwise describe the location*), whereon I am insured by you, by your policy, No.   the sum of   dollars. I have not yet learned and do not know, in what way the fire was caused; but as soon as I am able, I will give you further information on the subject. (*If the insured or his agent knows, or has reasonable cause for supposing, how the fire was caught, he should say so, and state what particulars he can.*)

The house was wholly (*or partially*) destroyed by fire; and I shall claim a payment from you under your policy.

Written and sent this day of in the year

(*Signature.*) (*Seal.*)

Witness to the signature and sending.

(*Signature of Witness.*)

Some insurance companies, and, indeed, the express provisions of some policies, require that a sworn statement of the facts and circumstances of the loss, and the particulars of the claim, be given to the insurance company, with the certificate of a magistrate. I do not know that this course might not be always prudent. The form in which it is done must vary in each case, and be adapted to the peculiarities of that case. But the following Form will generally be a safe guide.

(103.)

To the................Insurance Company.

Whereas the said Insurance Company, by their policy numbered , and dated on the day of in the year caused me to be insured in the sum of dollars against loss or damage by fire to the following-described building; that is to say (*here describe or designate the building sufficiently to show clearly where and what it was, taking the description from the policy, but not copying it at length*), Now, I, the said (*name of the assured*) having been solemnly sworn, do depose and say,—

1. That on the day of now last past, between the hours of and a fire broke out in said building, whereby the same was greatly damaged (*or destroyed*), and the said fire was, according to my best knowledge and belief, caused by (*here set forth the causes so far as they are known, or supposed on reasonable grounds*), and I aver that the said fire was not caused by me, or by my design and occurrence, or with any previous knowledge on my part, or in any manner attributable to me or to my agency, direct or indirect.

2. That I was interested in the said property in the following manner: that is to say (*here say whether the insured owned the property himself, or was a tenant of it, or a landlord, or mortgagor or mortgagee, or trustee, or how otherwise he was interested*).

3. That there was no other insurance against fire of the said property (*or, if there was any other, state what it was*).

4. That the occupants of the building at the time of the fire were, so far as is known to me, the following persons (*set forth the names of the occupants, the parts of the building occupied by each one, and the purpose for which it was occupied*).

5. That the actual value of the building in dollars at the time of the fire, was, according to my best belief and judgment, dollars. (*If the property was personal, as goods, furniture, or the like, say, as may appear by the schedule annexed.*)

6. That the whole of said value was lost by the fire; and being more than the sum insured thereon, I now claim of said insurance company said sum of dollars. (*Or if the building was injured, and not destroyed, then say that so much of the value—stating the amount—of said building was lost by the fire, inasmuch as the building, if repaired, cannot be restored to as good condition as before, for a less amount than that sum.*)

Witness my hand at this day of in the year

(*Signature.*)

(*Certificate to be appended to the foregoing.*)

State of , }
County of , } ss.

I (*name of the magistrate*) a justice of the peace in and for said county (*or what else may be his office*), dwelling near to the property above mentioned, in the town (*or city*) of have investigated the circumstances attending the said fire, and am personally acquainted with the said (*name of insured*), whose character is good; and I believe that the above statement to which the said (*name of insured*) has made oath in my presence is true; that the loss cannot be imputed to fraud or misconduct on his part; and that he has suffered by the fire a loss of dollars. I am not in any way interested in the said property, or in the said policy, or any claim under the same.

In Witness of all of which I have hereunto set my hand and my seal (*of office, if he has an official seal*), at this day of in the year

(*Signature of Magistrate.*) (*Seal.*)

(104.)

Assignment of a Policy to be indorsed Thereon.

I (*name of insured*) insured by the within policy, in consideration of a dollar paid to me by (*name of the assignee*) and for other good considerations, do hereby assign, and transfer to the said (*name of the assignee*) this policy, together with all the right, title, interest, and claim which I now have or hereafter may have, in, to, or under the same.

Witness my hand this day of in the year

(*Signature.*)

(*Witness.*)

It is always best to write this assignment on the policy itself, but it may sometimes happen that this is not convenient or possible; the insured who wishes to make the assignment not having the policy within his possession or easy reach. Then the assured may use the following Form:

(105.)

Whereas, the Insurance Company, by the policy, numbered and dated on day of in the year caused me to be insured against loss or damage by fire on a certain building, being (*designate the building by location or otherwise*) in the sum of dollars; now, I the said (*name of the insured*), in consideration of one dollar paid to me by (*name of the assignee*) and for other good considerations, have transferred and assigned, and do by these presents transfer and assign unto the said (*name of the assignee*) the said policy of insurance, and all the right, title, interest, or claim, which I now have or ever may have in, to, or under the same, and in and to any sum of money which now is o shall ever be payable thereon.

Witness my hand this day of in the year

(*Signature.*)

(*Witness.*)

If the policy be on goods, or if it be not a fire-policy, but a marine-policy, or a life-policy, then the assignment must be made to conform to the facts.

It is *always* best to get the assent of the insurance company to the transfer *before it is made.* And always the assignment, when made, should be exhibited without loss of time, to them or to their agent authorized to give their assent, and this assent to the assignment be obtained and written upon the policy, or, if that cannot conveniently be, on the assignment, and in the books of the insurance company.

CHAPTER XXVIII.

LIFE-INSURANCE.

SECTION I.

THE PURPOSE AND METHOD OF LIFE-INSURANCE.

IF A insures B a certain sum payable at B's death to B's representatives, we have only the insurer and insured, as in other cases of insurance. But if A insures B a sum payable to B or his representatives on the death of C, although C is often said to be insured, this is not quite accurate; more properly, B is the *insured* party and C is the *life-insured*.

Life-insurance is usually effected in this country in a way quite similar to that of fire-insurance by our mutual companies. That is, an application must be first made by the insured; and to this application queries are annexed by the insurers, which inquire, with great minuteness and detail, into everything which can affect the probability of life. These must be answered fully; and if the insurer be other than the life-insured, there are usually questions for each of them There are also, in some cases, questions which should be answered by the physician of the life-insured, and others by his friends or relatives; or other means are provided to have the evidence of the physician and friends.

These questions are not precisely the same in the forms given out by any two companies; and we do not speak of them in detail here. The rules as to the obligation of answering them, and as to the sufficiency of the answers, must be the same in life-insurance that we have already stated in the chapters on Fire and Marine Insurance; or rather must rest upon the same principles. And the same rules and principles of construction therein set forth would doubtless be applied to the question whether a contract had been made, or at what time it went into effect.

SECTION II.

THE PREMIUM.

If the insurance be for one year only, or less, the premium is usually paid in money, or by a note, at once. If for more than a year, it is usually payable annually. But it is common to provide or agree that the annual payment may be made quarterly, with interest from the day when the whole is due. Notes are usually given; but if not, the whole amount would be considered due. If A, whose premium of $100 is payable for 1878 on the 1st day of January, then pays $25, and is to pay the rest quarterly, but dies on the 1st of February, the $75 due, with interest from the 1st of January, would be deducted from the sum insured. If the policy provides that the risk shall "terminate in case the premium charged shall not be paid in advance on or before the day at noon on which the same shall become due and payable," and the day of payment falls on Sunday, the premium is not payable until Monday, although the assured dies on Sunday afternoon.

Provision is sometimes made that a part of the premium shall be paid in money, and a part in notes, which are not called in unless needed to pay losses. The greater the accommodation thus allowed, the more convenient it is, obviously to the insured, but the less certain will he be of the ultimate payment of the policy, because, in the same degree, the fund for the payment consists only of such notes, and not of payments actually made and invested. There is a great diversity among the life-insurance companies in this respect. But even the strictest, or those which require that all the premiums shall be paid in money, usually provide also that an amount may remain overdue, without prejudice, which does not exceed a certain proportion—say one-half or one-third—of the money actually paid in on the policy. This is considered, under all ordinary circumstances, safe for the company, because every policy is worth as much as this to the company. Or, in other words, it would always be profitable for the company to obtain a discharge of its obligation on a policy, by repaying the insured so small a proportion of wnat has been received from him.

Taking a note would certainly be a waiver of immediate payment, if not itself a payment.

The premiums, after the first, must be paid on the days on which they fall due. If no hour be mentioned, then it is believed that the insured would have the whole day, even to midnight. It is possible, however, that he might be restricted to the usual hours of business, and perhaps even to those in which the office of the insurers is open for business.

Practically, the utmost care is requisite on the part of the assured, to pay his premium as soon as it is due; and it is a wise precaution to pay it a little before. This is the only proper and safe course. But we believe it to be not unusual for the insurers to accept the premium if offered them a few days after, and continue the policy as if it were paid in season, provided no change in the risk has occurred in the mean time.

And sometimes the rules of the company, and in some States the statutes, provide, that, if a policy be defeated by a non-payment of the premium, the insured does not lose all that he has paid; but a certain proportion of the value which the policy then had shall be paid to him.

The time of the death is sometimes very important. If the policy be for a definite period, it must be shown that the death occurs within it. If there were an insurance on a man's life for a year, and some short time before the expiration of the term he received a mortal wound, of which he died one day after the year, the insurer would not be liable. And the terms of the policy may possibly make it necessary to determine which of two persons lived longest; as if a sum were insured on the joint lives of two persons, to be paid to the representatives of the survivor.

SECTION III.

THE RESTRICTIONS AND EXCEPTIONS IN LIFE-POLICIES.

OUR policies usually contain certain restrictions or limitations as to place; the life-insured (he whose life is insured for his own or another's benefit) not being permitted to go beyond certain limits, or to certain places. But there is nothing to prevent a bargain permitting the life-insured to pass beyond these bounds, either in consideration of new and further payments, or of the common premium.

So certain trades or occupations, as of persons engaged in making gunpowder, or of engineers or firemen about steam-engines, are considered extra-hazardous, and as therefore prohibited, or requiring an extra premium.

The exception, however, which has created most discussion, is that which makes death by suicide an avoidance of the policy. The clause respecting duelling is plain enough ; and no one can die in a duel without his own fault. But it is otherwise with regard to self-inflicted death. This may be voluntary and wrongful, or the result of insanity and disease, for which the suffering party should not be held responsible.

The general principles of the law of contracts, and of the law of insurance particularly, would lead to the conclusion that "death by his own hands," but without the concurrence of a responsible will or mind, would not discharge the insurers, without a positive provision to that effect. We should put such a death on the same footing with one resulting from a mere accident, brought about by the agency, but without the intent, of the life-insured. As if poison were sent to him by mistake for medicine, and he swallowed it under the same mistake.

Much question has been made, *when* a man may be believed to be dead, simply because nothing is known about him, or has been known for a long period. But there is not and cannot be any other presumption of law on the subject than that, after a certain period of absence and silence, there is a presumption of death ; and seven years has been mentioned in England and in this country as this period, and even sanctioned by legislation in New York. But all questions of this kind we regard as pure questions of fact. Whichever party rests his case upon the death or the life of a certain person, at a certain time, must satisfy the jury upon this point by such evidence as may be admissible and sufficient.

SECTION IV.

THE INTEREST OF THE INSURED.

EVERY one insured in any way must have an interest in the subject-matter of the insurance. A person may effect insurance on his own life in the name of a creditor, for a sum beyond the amount of the debt, the balance to enure to his family, and the policy will be valid for the whole amount insured. Any one may insure his own life; but if the insured and the life-insured are not the same, that is, if the insured be insured on some other life than his own, interest must be shown.

A father has an insurable interest in the life of his minor son. And the general rule is, that any substantial pecuniary interest is sufficient, although not strictly legal nor definite. This has been held in the case of a sister dependent on a brother for support; and the rule would be held to apply not only to all relations, but where there was no relationship, if there were a positive and real dependence. That is, any one may insure a sum on the life of any other person on whom he or she really depends for support or for comfort. And generally, it is said to be enough, if, according to the ordinary course of events, pecuniary loss or disadvantage will naturally and probably result from the death of the one whose life is insured.

So an existing debt gives the creditor an insurable interest in the life of a debtor. But if the debt be not founded on a legal consideration, it does not sustain the policy. And if the debt be paid before the death of the debtor, the insurers are discharged.

SECTION V.

THE ASSIGNMENT OF A LIFE-POLICY.

LIFE-POLICIES are assignable at law, and are very frequently assigned in practice. And the assignee of a policy is entitled on the death of the party insured, to recover the full sum insured without reference to the amount of the consideration paid by him for the assignment. A large proportion of the policies which are effected are made for the purpose of assignment; that is, for the purpose of enabling the insured to give this additional security to his creditor. If the rules of the company or the terms of the policy refer to an assignment of it, they are binding on the parties. On the one hand, an assignment would operate as a discharge of the insurers, provided a rule or expressed provision gave this effect to the assignment. And, on the other, if the agreement were that the policy should continue in favor of the assignee, even after an act which discharged it as to the insured himself,—as, for example, his suicide,—the insurers would be bound by it.

It is an important question what constitutes an assignment. The general answer must be, any act distinctly importing an assignment. And, therefore, a delivery and deposit of the policy, for the purpose of assignment, will operate as such, without a formal written assignment. So will any transaction which gives to a creditor of the insured a right to payment out of the insurance.

It seems, however, that delivery is necessary. And where an assignment was indorsed on the policy, and notice given to the insurer, but the policy remained in the possession of the insured, it was held that there was no assignment. Where, however, the assignment is by a separate deed, which is duly executed and delivered, this is an assignment of the policy, without actual delivery of the policy itself.

SECTION VI.

WARRANTY, REPRESENTATION, AND CONCEALMENT.

The general principles on this subject are the same which we have already stated in reference to other modes of insurance. In life-policies, however, the questions which must be answered are so minute, and cover so much ground, that difficulty seldom arises except in relation to the answers. One advisable precaution is for the answerer to discriminate carefully between what he knows and what he believes. If he says simply "yes" or "no," or gives an equivalent answer, this is in most cases a strict warranty, and avoids the policy if there be any material mistake in the reply. But where the answerer adds the words "to the best of my knowledge and belief," he *warrants* only the fact of his belief, or, in other words, nothing but his own entire honesty.

The cases which turn upon the answers to the questions are very numerous; but they necessarily rest upon the especial facts of each case, and hardly permit that general rules should be drawn from them. Some, however, may be stated.

The first is, that perfect good faith should be observed. The want of it taints a policy at once, and the presence of it goes far to protect one. Thus, where the life-insured was beginning to be insane, but was wholly unconscious of it, the policy was not vitiated by the concealment, although two doctors in attendance upon him knew how the case stood.

Most of the policies of the present day provide that the policy is made on the faith of the statements in the application for insurance with the stipulation, and that, if they shall be found in any respect untrue, the policies shall be avoided Then the stipulations are considered as warranties, and if untrue, even in a point immaterial to the risk, avoid the policies.

There is a warranty, or statement, usually making a part of nearly all life-policies; it is that the life insured is in good health. But this does not mean perfect health, or freedom from all symptoms or seeds of disease. It means reasonably good health, and loose as this definition, or rule, may be, it would be difficult to give it any other. And if a jury on the whole are satisfied that the constitution of one warranted to be "in good health" is radically impaired, and the life made unusually precarious, there is a breach of the warranty, although no specific disease is shown which must have that effect. On the other hand, this warranty is not broken by the presence of a disease, if that be one which does not usually tend to shorten life (in one English case dyspepsia was said to be such a disease), unless it were organic, or had increased to that extreme degree as to be of itself dangerous.

Consumption is the disease which is most feared in this country, as well as in England. And the questions which relate to the symptoms of it, as spitting of blood, cough, and the like, are exceedingly minute. But here also there must be a reasonable construction of the answers. Thus, if spitting of blood be positively denied, there may be no falsification in fact, though literally speaking the life-insured may have spit blood many times, as when a tooth was drawn, or from some accident. If there be an action on the policy, and the insurers rest their defence on any falsification of this kind, the question usually put to the jury is, Was the party affected by any of these or similar symptoms, in such wise that they indicated a disorder tending to shorten life? And any symptom of this kind, however slight,—as a drop or two of blood having ever flowed from inflamed or congested lungs,—should be stated. Statements materially untrue on these points avoid the policy, although the insured, at the time of his application, did not believe that he had any pulmonary disease, and the statement made by him was not intentionally false, but, according to his belief, true.

The insurers always ask who is the physician of the life-insured that they may make inquiries of him if they see fit. And his name must be stated fully and accurately. It is not enough to give the name of the usual attendant; but every physician really consulted should be named, and every one consulted as a physician, although he is an irregular practitioner or quack.

If the warranty be that the life-insured is a person of sober and temperate habits, it has been held, in an action on such a policy, that the jury are not to inquire whether his habits of drinking are such as might injure his health; for if he has any "habits of drinking," this would discharge the insurers, because they have a perfect right to say that they will insure only those who are temperate. But it may be answered, that although the insurers have this right, and there may be good reasons why this should be the general practice, yet unless they use the word "abstinence," or something equivalent, they have no right to say that any one is not "temperate" who does not drink enough to affect his health; for as, generally, all intemperance must affect health injuriously, if there be no such injury, the presumption would be that there was no intemperance, and there is clearly a broad distinction between temperance and total abstinence.

An answer, "not subject to fits," is not necessarily falsified by the fact that the life-insured has had one or more fits. But if the question had been, "Have you ever had fits?" then it is said that any fit of any kind, and however long before, must be stated. But if a man had a fit when a young child, and forgot to mention it, or considered it wholly unimportant, and it had nothing to do with his state of health, it would hardly be held a falsification which would avoid the policy.

As there is always a general question as to any facts affecting health not particularly inquired of, a concealment of such a fact goes to a jury, who are to judge whether the fact was material, and whether the concealment were honest. As when a life-insured was a prisoner for debt, and so without the benefit of air and recreation, and this was not told; and where a woman whose life was insured had become the mother of a child under disgraceful circumstances some years before, and this fact was concealed, the plaintiff was non-suited.

If the policy, and the papers annexed or connected, put no limits on the location of the life-insured, he may go where he will. But if, when applying for insurance, he intends going to a place of peculiar danger, and this intention is wholly withheld, it would be a fraudulent concealment.

If facts be erroneously but honestly misrepresented, and the insurers, when making the policy, knew the truth, the error does not affect the policy. Nor does the non-statement of a fact which diminishes the risk.

If upon a proposal for a life insurance, and an agreement thereon, a policy be drawn up by the insurers and presented to the insured and accepted by them, which differs from the terms of the agreement, and varies the rights of the parties concerned, equity will interfere and deal with the case on the footing of this agreement, and not of the policy. But it may be shown by evidence and circumstances, that it was intended by the insurers to vary the agreement, and propose a different policy to the insured, and that this was understood by the insured, and the policy so accepted.

SECTION VII.

INSURANCE AGAINST ACCIDENT, DISEASE, AND DISHONESTY OF SERVANTS.

Of late years both of these forms of insurance have come into practice, but not so long or so extensively as to require that we should speak of them at length. In general, it must be true, that the principles already stated as those of insurance against marine peril, or fire, or death, must apply to these other—and, indeed, to all other—forms of insurance, excepting so far as they may be qualified by the nature of the contract.

From one interesting case which has occurred in England, it seems that, when an application is made for insurance, or guaranty against the fraud or misconduct of an agent, questions are proposed, as we should expect, which are calculated to call forth all the various facts illustrative of the character of the agent, and all which could assist in estimating the probability of his fidelity and discretion. But a declaration of the applicant as to the course or conduct he was to pursue was distinguished from a warranty. He may recover on the policy, although he changes his course, provided the declaration was honest when made, and the change of conduct was also in good faith. In this case the application was for insurance of the fidelity of the secretary of an institution. There was a question as to when, and how often, the accounts of the secretary would be balanced and closed; and the applicant answered that these accounts would be examined by the financial committee once a fortnight. A loss ensued from the dishonesty of the secretary, and it appeared to have been made possible by the neglect of the committee or the directors to examine his accounts in the manner stated in the policy. But the insurers were held on the ground that there was no warranty.

CHAPTER XXIX.

DEEDS CONVEYING LAND.

SECTION I.

WHAT IS ESSENTIAL TO SUCH DEEDS.

By the old law, no instrument was considered made until it was sealed; then it was thought to be *done*, and the word *deed*, which literally means only something done, was given to every written instrument to which a seal was affixed; and that is the legal meaning now. But the common meaning of the word is an instrument for the sale of lands; and it is of this that we would now treat.

By the statutes and usage of this country generally, no lands can be transferred excepting by a deed, which is signed, sealed, acknowledged, delivered, and recorded. In some States seals are abolished.

We give annexed to this chapter an Abstract of the Laws of all the States relating to deeds and their requirements.

What the deed should be, that is, in what words it should be expressed, we can best show by the forms appended to this chapter, and do not propose to say more about it than this. It is not safe to depart from forms, and established phrases, which have passed before the courts so often that their exact meaning is certainly known. There are things which seem to be and perhaps are vain repetitions; and for the usual words it may be thought that others of the same or better meaning may be substituted. Such changes may be made *perhaps*, without detriment; but *perhaps, also*, with ruinous results; and it is not wise to run the risk.

It should be signed; and this means, properly, that the seller or grantor should write his name in the usual way, in the proper place, and with ink. If the grantor cannot write his name, he may merely make his mark. It has been said that writing with a lead pencil is enough, but it would not be safe to trust to it. The name of the grantee should be distinctly written in the proper place, in ink. Sometimes, in our large cities, an agent buys land for a principal who does not wish to be known, and the agent's name is inserted as grantee, *in pencil,* and the deed is so executed and acknowledged and delivered; and some time afterwards the agent rubs his name out, and writes the name of his principal, the actual buyer, instead. But this is a very unsafe and reprehensible practice, and the deed cannot be considered satisfactory.

The deed of a corporation must be signed by an agent or attorney, who should be careful to execute it in the manner indicated in some of the forms appended. In one case, in Massachusetts, where a deed was written throughout as the deed of a corporation, and their treasurer signed it thus: "In witness whereof, I, the said C C, in behalf of the said company, and as their treasurer, have hereunto set *my hand and seal,*"—it was held that this was the deed of the treasurer, and not the deed of the corporation, and did not transfer the lands. This is an extreme case, and the law might not always be applied with so much severity; but it is best not to incur any such risk. So, too, the rule that a person who is to be authorized to affix the seal of another should be authorized under the seal of the principal, is so general, that, although it has important exceptions, it should always be observed.

The seal is properly a piece of paper wafered on, or sealing wax pressed on. In the New England States generally, and in New York, nothing else satisfies the legal requirement of a seal. In the Southern and Western States generally, a scrawl, intended for a seal, usually made by writing the word "seal" within a square or diamond, is regarded in law as a seal. If there be but one seal on an instrument, and many parties, all of whom should seal it, this seal will be taken generally for the seal of each one; although, properly, each signer should put a seal against his own name.

The deed should be delivered. If a man makes a deed, and acknowledges it, and keeps it in his possession, and dies, the deed has no effect whatever; no more than if the grantor had put it in the fire. Even where it was recorded, and then taken back by the grantor and kept by him, with words going to show that the grantor did not wish the grantee to know of it, it was held not to have been delivered. But there are no especial words or form necessary for delivery. If the deed, in any way whatever, gets into the possession of the grantee, with the knowledge and consent of the grantor, it is a delivery.

The grantor may deliver it by his agent, and it may be delivered to the agent of the grantee, authorized by him to receive it. Moreover, the law permits a kind of conditional delivery. Thus, the grantor may deliver the deed to a third person, to be delivered by him to the grantee on a certain condition, or when a certain thing is done; and when that condition is performed, or the thing is done, the deed belongs to the grantee, and takes effect in the same way as if it had been delivered to him personally. In legal language, the deed is said to be delivered to the third person, as an *escrow*.

So the grantor may put the deed in the hands of the third person, with directions to give it to the grantee after the death of the grantor, provided the grantor does not reclaim it in the mean time. Then the grantor can reclaim it whenever he will, which he cannot do after he has delivered it to the grantee, but if he does not reclaim it during his life, at his death it becomes the property of the grantee, and the law now considers that it was delivered to him when first delivered to that third party. So that deed is good even against creditors, provided that the grantor was perfectly solvent when he put the deed in the hands of the third party, and acted altogether in good faith.

If a deed to a married woman be delivered either to her or to her husband, it is sufficient.

As there must be delivery to the grantee, or to some one for him, so there must be assent and acceptance on his part. The law will help any evidence tending to show such assent, by presuming in favor of the grantee's assent if the deed be wholly and only favorable to him. But not if there is money to be paid by him, or anything important to be done if he accept the deed.

It is usual and proper that the execution of the deed should be attested by witnesses. In many of our States, two witnesses are required by statute. In New York, one is enough. In the greater number, witnesses are not absolutely required by statutes, nor by strict law of any kind; but even there it is usual and safer to have them.

The witness should see the party sign; but if the deed is signed near him, and is immediately brought to him by the grantor, who tells him that is his signature, and asks him to witness, this would be sufficient in law.

It is desirable that witnesses, when called on to testify, should remember the signature, sealing, etc.; but it is sufficient in law that they are certain of their handwriting, and can declare under oath that they should not have attested the execution and delivery if they had not seen it. If witnesses are dead, proof of their handwriting is sufficient; and if this cannot be offered, then proof of the handwriting of the grantor is enough. If witnesses attest the signing, sealing, and delivery, in the common form, proof of their handwriting, in case of their death or absence, is proof of the execution and delivery of the deed.

The witness should, properly, be of sufficient age and understanding, but may be a minor. He should have no interest in the deed. Hence a wife is not a proper witness of a deed to her husband. But the courts, and especially a court of equity, would seldom permit a deed to be avoided through the incompetence of a witness, if there were no suspicion of wrong.

Generally a deed is valid as between the parties, although not acknowledged; but, to entitle it to be recorded, it must be acknowledged. For this purpose the grantor must go before a person qualified by law to receive acknowledgments, and exhibit the deed to him, and acknowledge it as his free act and deed; and the person receiving the acknowledgment then certifies that he has received this acknowledgment, under the proper date.

In general an acknowledgment may be made before any justice of the peace, or a commissioner appointed for the State in which the land to be conveyed is situated, if the deed is executed in another State, or any consul or consular agent of the United States if the deed is executed in a foreign country. This acknowledgment must be made, or the deed cannot be recorded. And the deed is invalid, as notice, if the acknowledgment is defective, although it is actually recorded.

Formerly, all the grantors acknowledged the deed; and this continues to be usual in most places, and is the safest practice. But, in some places, it is now sufficient in law, if either of the grantors acknowledge it.

In many States, if a wife, separately or joining with her husband, conveys away her land, a particular form and mode of acknowledgment is required, in order to ascertain that she does it of her own free will; and any such directions or requirements should be followed with great care. The Forms added to this chapter will show how this is done.

An attorney, A B, who executes a deed for another, C D, should acknowledge it as "the free act and deed of the said C D," and not as his own.

The justice taking the acknowledgment must be careful to state it in his certificate, exactly as it was made before him.

In some of our States, recent laws have in effect required the assent of the wife to a transfer of the husband's real estate; not merely to convey her dower, but to pass the property to the grantee. We do not enumerate or specify these States here; having given previously an abstract of the law of husband and wife in all the States.

In all our States, we have the excellent system of registering (or recording, as it is more frequently called) all deeds of land in the public registers of the county in which the land lies. This was adopted for the purpose of giving certainty and notoriety to title, and it works admirably well. The investigation of title is usually easy to those accustomed to this mode; and every purchaser of land should ascertain that the deed will give him good title before he takes it.

The law generally requires that a deed of lands should be acknowledged and recorded, to have full effect; but judicial decisions have everywhere qualified the force of these words, and in some instances the language of the statutes varies. But the rules of law in reference to the recording are quite uniform in all the States, and are as follows:

In the first place, every acknowledged deed is considered as recorded as soon as it is in the hands of the recording officer; and therefore he generally minutes upon it the day, hour, and minute when it was received by him. This may be very important; for if A makes his deed and delivers it to B, who presents it for record at five minutes past noon, and C, a creditor of A, attaches the same estate at four minutes past noon of the same day, the grantee loses the land and the creditor gets it; but the grantee saves it, if he presents it to the office three minutes and fifty seconds after noon.

In the next place, as the purpose of public registration is general notoriety, a deed is perfectly good without record against the grantor himself and his heirs, because the grantor himself could not but know of the deed, and, as all title passed out of him by it, his heirs could take none from him.

And finally, a deed not recorded is just as good as if it had been recorded, against any parties, or the heirs of any parties, who took the land from the grantor by a subsequent deed, even for a full price, if they had at the time notice or knowledge of the prior and unrecorded deed. Many wise persons have doubted the expediency of this last rule, because it tends to raise troublesome questions, and to make grantees careless about recording their deeds. But the rule itself is universally and firmly established, and in some statutes requiring record this exception is expressed.

A deed should be dated; but, if it have no date, it will take effect from delivery. Any erasures or alterations should be noticed and stated above the names of the witnesses, as having been made before the execution of the instrument. Any material alteration by a grantee, or by his procurement, makes the deed void in most cases, so far as he is concerned.

It is usual, and therefore proper, to name executors, administrators, etc., as in the forms appended; but, generally, the rights and obligations of the deceased fall by law on their legal representatives.

SECTION II.

THE USUAL CLAUSES IN DEEDS.

It is customary to recite in all deeds the consideration on which they are made. This is usually the price paid for them. Sometimes it is this price in part, and other things in part.

Sometimes there is no price paid, the land being either a gift, or conveyed for other considerations. In the great majority of deeds, the language used is, "in consideration of (so much money) paid me by the said (grantee), the receipt whereof I acknowledge." Or it is, "in consideration of one dollar paid me, the receipt of which I acknowledge, and divers other considerations;" or, "in consideration of one dollar to me paid, the receipt of which I acknowledge, and of the love and goodwill I bear to the said (grantee)." It is always customary, although not necessary, to put in "one dollar," or some other nominal sum, although no price is paid.

Although the price is inserted, and the receipt thereof be acknowledged, the seller is not bound by his receipt. It is a general rule, as has been stated, that all written receipts of money are open to evidence, as written contracts generally are not. Under this rule, the seller may sue for the whole or any part of the money of which he has acknowledged the receipt, if he can prove that the money he demands has not been paid to him. He cannot, however, say that the money has not been paid, and *therefore the deed is void*, and the land has not passed to the grantee. For only that part of the deed which is a receipt is open to denial or evidence.

Of the words of conveyance, which are usually "give, grant, sell, and convey," it needs only be said, that it is best to use them, *because* it is usual, but that other words, or these with some change, would be sufficient in law.

The description of the land should be minute and accurate, to an extreme degree. In this country, it is customary and well to refer to the previous deeds by which the grantor obtained his title. This is done by describing them by their parties, date, and book and page of registry. It may be well to remark, that a deed referred to in a deed becomes, for most purposes in law, a part of the deed referring.

By the law of England and of America, if land is conveyed by deed to "A B," the grantee takes it for his life only. Nor will he take it in full property (or, to use the technical law-term, in fee simple), that is, with full power of disposing of it during his life or at his death, with a right on the part of his heirs to it if he does not dispose of it, unless it is given to "A B and his heirs." These last words, which are commonly called words of inheritance, must always be added; for although there are some qualifications to this rule, which might help those who take such a deed inadvertently, there are none to which it would be safe to trust.

The deed is terminated by this clause of execution: "In witness whereof, I, the said A B, on the —— day of —— in the year ——, have hereunto set my hand and seal," or "subscribed (or written) my name and affixed my seal." And there should be no departure from this, although an exact adherence to this formula may not be necessary to the validity of the deed. This clause is often called the "In Testimonium clause."

If the deed contains nothing but what has now been said, it will convey the land, or all the right, title, and interest in and to the land, possessed by the grantor. But it is only what is called a *quitclaim deed.* That is, it is *not* a *warranty deed.* These phrases, which are in common use, explain themselves. Originally, a quitclaim deed was intended, and indeed operated, only where the grantee already held possession of the land, or some title to it, and the grantor intended to renounce all his right or title in favor of the grantee. But it was soon used where a man intended to sell and convey land, but not to give any warranty. And now, because there is some question, in some of our States, as to the effect of the words "give, grant, sell, and convey," although there be no express warranty in the deed, it is best, and it is usual, when only a quitclaim is intended, without any warranty whatever, to substitute for the words of conveyance above mentioned the words "grant and quitclaim," or, more accurately, "release and quitclaim." Then, if the grantee afterwards loses the land because the grantor had no title to it, the grantor is nevertheless under no responsibility, provided the transaction was an honest one on his part.

All purchasers, therefore, desire to have a warranty deed if they can get one. And a deed becomes a warranty deed, when clauses like those which follow are inserted just before the clause of execution:

"And I, the said A B (the grantor), for myself, my heirs, executors, and administrators, do covenant with the said C D (the grantee), his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C D as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said C D, his heirs and assigns forever, against the lawful claims and demands of all persons.

It will be noticed that this paragraph contains four different agreements or warranties,—covenants the law calls them. The cases are multitudinous, and the law excessively nice, as to their exact meaning and operation. None of this technical learning is it worth while to spread before the general reader. But the general purpose and effect of all of them together should be stated. It is, that if "the said C D," that is, the grantee, or his heirs or assigns, are turned out of that estate (ousted or evicted, the law says), on the ground that the grantor had no title, or an incumbered title, and could not convey any good and clear title, he or they may fall back on the grantor or his heirs, and demand damages for the loss of the land.

It is a question how much damage a grantee thus ousted shall recover. In most of our States, it seems to be the money paid for it, with interest (deducting rents and profits), and the legal costs and charges (not including counsel fees) for defending against the suit which has ousted him from the land, and no more. But in other States, as generally in New England, the party ousted recovers the actual value of the land, with his improvements, which he loses by the defect of the grantor's title; although this may be much more than he paid for it. It is not, however, settled uniformly what the measure of damages is.

In forms of deeds there is usually a blank of a few lines left after the words "incumbrances;" and this is intended for the insertion of any mortgage, or other incumbrance, which may exist; thus, "excepting a mortgage to, etc., dated, etc., to secure the sum of, etc." Or, "excepting a right in the owners of the adjoining land to have and maintain a drain running, etc."

Sometimes quitclaim deeds are made with this warranty: "And I will, and my heirs, etc., shall, warrant and defend, etc., to the said C. D, etc., against all claims and demands of myself, or of any persons deriving title by or through me." Such a warranty will hold the grantor and his heirs liable for any incumbrance made or suffered by him, but not for any other.

As the usual covenants of a warranty deed are made with the grantee, "his heirs and assigns," if such grantee conveys the land only by grant and quitclaim, without warranty, *his* grantee takes the benefit of all the previous warranties to which this last grantor was entitled. Thus, A sells with warranty to B; B quitclaims to C; C is ousted by D, who proves that he has a better title than A. C cannot sue B because he got no warranty from B; but he can sue A on A's warranty to B, which was transferred to C.

Sometimes estates are conveyed on condition; but this is a very catching thing, and nobody should ever take such a deed if he can help it. It is hardly safe to have the word *condition* in any deed but a mortgage. The reason is, that if an estate is conveyed on condition, and the condition is broken, the estate is lost. Thus if land is sold on a certain street with this clause: "And the land aforesaid is sold on condition that neither the grantee, nor any one deriving title from or through him, shall build within ten feet of the street." If any owner build six inches over the line, by mistake, or extend his building by an addition of a foot or so in any part, the whole land, house and all, *might* be lost and forfeited to the grantor. And the grantor can always secure the proper effect of such a condition by a clause like this: "Provided, however, and it is agreed, that if the said C D, etc., shall build, etc., the said A B, or his heirs or assigns, may enter upon the land hereby conveyed, and abate and remove any and all buildings or parts of buildings, which stand nearer said street than the limit of ten feet aforesaid;"—or some similar clause, as might be framed to suit the case. This would be just as good for the grantor and a great deal safer for the grantee.

By a rule of law which originated in this country, and is now universal here, if a married woman holds lands, the husband and the wife, joining in one deed, may convey them. In some of our States such a deed is regulated by statutes, which of course are to be followed. And in many of them the wife now has peculiar powers by statute, as stated in Chapter V. on Married Women. It may be necessary that she should renounce or release certain rights, as of homestead, etc., under these statutes, if it is intended that the grantee should take a clear title; and in such case proper words should be inserted. This is now the custom, for example, in Massachusetts. She should always release her right of dower, unless it is intended that she should preserve it. In some States her signing the deed with her husband does not release anything, even if it could be proved that such was her intention, unless the deed contain words expressing her intention to release or convey such or such a right or interest. In most printed forms there is a blank left to be filled up for this purpose. As this differs in different States I shall refer to it again.

It may be well to remark that bargains are often made for the purchase and sale of real property. If the contract be oral only, it has no force in any court. If it be in writing, either party may, in a court of law, recover damages from the other if he refuses to perform his contract. Or, in a court of equity, he may compel the other to execute his contract. Not, however, if there was fraud in the contract, or oppression, or gross misrepresentation, or intentional and important concealment. But a mere inadequacy of price—all things being honest—will not prevent a court of equity from enforcing such an agreement.

Deeds conveying land are of vast variety. They not only differ that they may suit the particular purposes of the parties and the terms of their bargain, but those used in each section of the country differ somewhat in form from those used in another; and different conveyancers in the same State prefer one form to another. But these differences are generally, if not always, differences only of form, and are seldom essential to the meaning and effect of the deeds. I give here forms of all the kinds most in use; and in such variety, and so selected and prepared, that it is believed that any person in any part of this country will be able to find a form, which, either as it stands, or with such alterations as can be readily seen to be required by the use he would make of it, will be safe, and sufficient for his purpose.

As acknowledgments differ much in form, enough of them are given to show the kinds that are used. The fuller and more particular are the safer, although the shorter and more general might be sufficient.

In New England, a deed of land is usually what is called in law a Deed Poll; by which is meant a deed *of* one party, and *from* him to another. In the other States generally, a deed of lands is more commonly in the form of an Indenture, which, as has been said before, is an instrument *between two or more parties*. The difference between them will be seen in the forms given. The first one is a Deed Poll. But most of them are Indentures, as they are most frequently used; although a Deed Poll that was satisfactory in other respects would generally suffice to give good title to land anywhere.

A form of a Deed Poll may be converted into an Indenture by changing the beginning of it in the manner shown in the forms, and, whenever the word "grantor" comes, changing that into "the party of the first part." And a deed by Indenture is made a Deed Poll by changes of an opposite kind. How to make these changes will be seen by comparing the deeds of the two kinds as herein given.

Another difference between the Deeds Poll in common use in the New England States, and the deeds by Indenture in use elsewhere, must be noticed.

If the grantor by a Deed Poll has a wife, and it is intended that she shall relinquish her dower, she is not mentioned as grantor, but in the "In Testimonium," so called, which is that part of the deed which begins with "In witness (or in testimony) whereof," her name is mentioned, and it must be distinctly said that she signs the deed in token of her relinquishment or release of dower. This is shown in Form 106. But where deeds by Indenture are used, there she is joined with her husband, and named as grantor; he and she being "parties of the first part." It is, however, *not* necessary that anything should be said in the deed about her release of dower, or homestead; but she signs and seals the deed, and, in the acknowledgment, express mention is made of her release of dower and homestead, and also that she was separately examined. Some of the forms are drawn in this way. Other forms are written as if the grantor was unmarried, or as if his wife, if he had one, did not intend to give up her dower. But all these forms can be readily altered, and made to resemble either of the forms according as there is or is not a wife, or as, if there be a wife, it is intended that she should join in the conveyance and relinquish her dower, or that the husband should convey subject to the wife's dower. If this last be the intention, it is not necessary to say so, as the mere fact that she is not a party to the deed preserves for her the right of dower.

(106.)

A Deed Poll of Warranty, in Common Use in New England.

Know all Men by these Presents, That I, (*the grantor*) of (*residence, town or city, county and State*), (*occupation*), in consideration of (*the amount paid*) to me paid by (*here name the grantee or purchaser, giving in like manner his residence and occupation*), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said (*name the grantee, and then describe the premises granted, minutely and accurately*):—

To Have and to Hold the above-granted premises, to the said (*name the grantee*), his (*or her or their*) heirs and assigns, to his (*or her or their*) use and behoof forever. And I, the said (*name of the grantor*), for (*myself*) and (*my*) heirs, executors, and administrators, do covenant with the said (*name of the grantee*), and with his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances (*if there be any incumbrances, as a mortgage or lien, or right of way, or drain, or air, or light, say* excepting, *and then describe the incumbrance*), that I have good right to sell and convey the same to the said (*name of the grantee*), and his (*or her*) heirs and assigns forever as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said (*name of the grantee*), and his heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, I, the said (*name of the grantor*), and (*name of his wife*), wife of said grantor, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals this day of in the year of our Lord nineteen hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

In those States in which a homestead law exists, the signature of the wife, with a clause like that above, would not release the homestead. To effect this the following clause should be inserted before the words, "In token of :"—

"In token of her release to the said (*name of the grantee*), of all her right, interest, and estate to or in the premises herein conveyed, under the homestead laws of this State ; and also," etc.

Some conveyancers think this hardly sufficient, and prefer the following method, which would undoubtedly be effectual in every one of these States. Insert before the paragraph beginning "In witness whereof," this paragraph :—

"And I, (*name of the wife*) wife of the said (*the name of the grantor*), in consideration of one dollar to me paid by the said (*the name of the grantee*), the receipt whereof is acknowledged, do hereby release and assign to the said (*the name of the grantee*), and his heirs and assigns, all my right, interest, claim, and estate in or to the premises within granted, under the homestead laws of this State, or any other statutory provisions thereof."

It is to be remembered that, whether the deed be a warranty deed like that above given, or a release or quitclaim, or a mortgage deed, it is equally necessary and proper that the wife should release her homestead right and her dower, unless it is intended that she should retain them.

Below the deed comes the acknowledgment, of which the briefest form is as follows, which is sufficient in a few States :

Commonwealth (*or State*) of (*County*) ss. (*Town, Month, and Date.*) Then personally appeared the above-named and acknowledged the above instrument to be free act and deed ; before me,

Justice of the Peace.

If the wife is a party to the deed, she should make her separate acknowledgment.

A full Form of acknowledgment, by both parties, sufficient anywhere, may be found in Form 112.

(107.)

Deed of Gift by Indenture, without any Warranty whatever.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, witnesseth, that the said (*the grantor*) as well for and in consideration of the love and affection which he has and bears towards the said (*the grantee*) as for the sum of one dollar, lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has given, granted, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does give, grant, aliene, enfeoff, release, convey, and confirm, unto the said party of the second part and his heirs and assigns forever, all (*here describe carefully the land or premises granted, by metes and bounds, and dimensions, contents or quantity, or boundary marks or monuments, and refer by volume and page to the deed of the land to the grantor, under which he holds it*).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with their and every of their appurtenances. To have and to hold the said hereby granted and described premises and every part and parcel thereof with the appurtenances unto the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

(108.)

Deed of Bargain and Sale without any Warranty.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, aliene, remise, release, convey, and confirm, unto the said party of the second part, and to his and assigns forever, all (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

On this day of in the year one thousand eight hundred and before me personally came (*the name of the party of the first part who is the grantor*) who is known by me to be the individual described in, and who executed the foregoing instrument, and then and there acknowledged that he executed the same as and for his own deed.

(*Signature.*)

(109.)

Quitclaim Deed without any Warranty.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

On this day of in the year one thousand eight hundred and before me personally came (*the name of the grantor*) who is known by me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(*Signature.*)

(110.)

Deed Poll of Release and Conveyance, Short Form.

Know all Men by these Presents, That I, (*the name of releasor*) of the County of and State of for and in consideration of one dollar to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quitclaim unto (*the name of the releasee*) of the County of and State of all the right, title, interest, claim, or demand whatsoever, I may have acquired in, through, or by a certain indenture or deed, bearing date the day of A. D. 19 , and recorded in the office of County, and State of in book of page to the premises therein described, to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

Witness my hand and seal, this day of A. D. 19

(*Signature.*) (*Seal.*)

STATE OF } ss.
COUNTY. }

I, in and for said county, in the State aforesaid, do hereby certify, that (*the name of the releasor*) personally known to me as the same person whose name is subscribed to the foregoing deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument in writing, as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this day of A. D. 19

(*Signature.*) (*Seal.*)

(111.)

Deed, with Special Warranty against the Grantor only.

This Indenture, Made this day of in the year of our Lord one thousand **nine** hundred and between (*the name of the grantor*) and (*name of the wife of grantor*) wife of the said (*name of the grantor*) of the County of and State of parties of the first part, and (*name and residence of the grantee*) party of the second part: Witnesseth, that the said parties of the first part, for and in consideration of the sum of to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell unto the said party of the second part, and his heirs and assigns, the following-described tract or parcel of land, situate in (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances unto the said party of the second part and his heirs and assigns forever.

And the said the said parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said premises against the claim of all persons, claiming or to claim by, through or under them only, they will forever warrant and defend.

In Testimony Whereof, The said parties of the first part have hereunto set their hands and seals the day first above written.

(*Signature of grantor.*) (*Seal.*)
(*Signature of wife of grantor.*) (*Seal.*)

Sealed and Delivered in Presence of

STATE OF
COUNTY. } SS.

I, in and for said county, in the State aforesaid, do hereby certify that (*name of the grantor*) personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the grantor's wife*) wife of the said (*name of the grantor*) having been by me examined, separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her right under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this day of
A. D. 18

(*Signature.*) (*Seal.*)

(112.)

Quitclaim Deed.—Long Form Homestead Waiver.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the grantor, and name of the grantor's wife*) parties of the first part, and (*name, residence, and occupation of the grantee*) party of the second part,

Witnesseth, That the said party of the first part, for and in consideration of dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, forever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following described lot , piece , or parcel , of land, to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the Same, Together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

And the said parties of the first part hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said parties of the first part, for themselves and their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they have not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered, in any way or manner whatsoever.

In Witness Whereof, The said party of the first part hereunto set their hands and seals the day and year above written.

(*Signature of grantor.*) (*Seal.*)
(*Signature of wife of grantor.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF ,
COUNTY. } SS.

I, in and for said county, and the State aforesaid, do hereby certify, that (*name of the grantor*) being personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the wife*) wife of the said (*name of the grantor*) having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this day of A. D. 19

(*Signature.*) (*Seal.*)

(113.)

Deed, with Covenant against Grantor, without Release of Homestead or Dower.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name of the grantor*) of the first part, and (*name of the grantee*) of the second part, witnesseth That the said party of the first part, for and in consideration of the sum of lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns forever.

And the said (*name of the grantor*) for (himself) and (his) heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, and his heirs and assigns, that (he) ha not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever.

In Witness Whereof, The said party of the first part ha hereunto set (his) hand and seal the day and year first above written.

(*Signature* .) (*Seal* .)

Sealed and Delivered in the Presence of

STATE OF ,
COUNTY. } SS.

I, in and for said county, and the State aforesaid, do hereby certify, that (*name of the grantor*) being personally known to me as the same person whose name (is) subscribed to the foregoing instrument of writing, appeared before me this day, in person, and acknowledged that (he) signed, sealed, and delivered the said instrument of writing as (his) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this day of
A.D. 19

(*Signature.*) (*Seal.*)

(114.)

Separate Relinquishment of Homestead and Dower in Land sold under Execution.

Know all Men by these Presents, That we (*name and residence of the debtor*) and (*name of his wife*) wife of the said of the County of and State of , parties of the first part, for the sum of one dollar to us paid by (*name of the purchaser*) of the County of and State of party of the second part, the receipt whereof is hereby acknowledged, do hereby agree and consent to let the said party of the second part levy and sell, under a certain execution, in favor of him, the said party of the second part, and against (*name of the debtor, or the defendant in the suit in which the execution issued*) now in the hands of the sheriff of the County of and State of and dated the day of A.D. 19 , the following-described tract of land, situated in the County of and State of to wit (*here describe carefully the land or premises granted, as directed in Form* 107), (and being the same land heretofore held, used, and occupied by the said parties of the first part, as a homestead) hereby waiving, releasing, relinquishing, and surrendering to and in favor of said party of the second part, under the said levy and sale on said execution, all the right, title, claim, interest, and benefit which we, the said parties of the first part, and each of us, have in and to said premises, by virtue of any and all homestead-exemption laws, now or heretofore in force in the State of , and more especially "An Act to exempt Homesteads from Sale on Execution," now in force in the State of

Witness our hands and seals this the day of 19 .

(*Signature.*) (*Seal.*)
(*Signature.*) (*Seal.*)

STATE OF , }
COUNTY. } SS.

I, in and for said county, in the State aforesaid, do hereby certify that personally known to me as the same person whose name is subscribed to the annexed instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*the name of the wife*) wife of the said having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned.

without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this day of A.D. 19 .

(*Signature.*) (*Seal.*)

(115.)

Full Warranty Deed, by Indenture, without Release of Homestead or Dower.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the grantor*) party of the first part, and (*name, residence, and occupation of the grantee*) party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged. and the said party of the second part, and his heirs, executors, and administrators, forever released and discharged from the same, by these presents, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain. sell, aliene, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

And the said (*name of the grantor*) for himself and his heirs, executors, and administrators, does covenant, grant, and agree to and with the said party of the second part, and his heirs and assigns, that the said (*name of grantor*) at the time of the sealing and delivery of these presents, is lawfully seized, in his own right, of a good, absolute, and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereunto belonging, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid. And that the said party of the second part, and his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, or his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unincumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever.

And also that the said party of the first part, and his heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for him or them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall be reasonably advised or required. And the said party of the first part, for himself and his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, and his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF , }
COUNTY OF , } ss.

On the day of in the year one thousand nine hundred and before me personally came (*the name of the grantor*) who is known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same, as his own free act and deed.

(*Signature.*)

(116.)

Warranty Deed, Short Form, with Release of Homestead and Dower.

This Indenture, made this day of in the year of our Lord one thousand eight hundred and between (*name, residence, and occupation of grantor, and name of his wife*) of the first part, and (*name, residence, and occupation of grantee*) of the second part, witnesseth, that the said party of the first part, in consideration of the sum of dollars in hand paid (the receipt whereof is hereby acknowledged), have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, all that piece or parcel of land situate in in the County of and State of to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with the appurtenances thereunto belonging: and all the estate, right, title, interest, claim, and demand of the said party of the first part herein.

And the said (*name of grantor and of his wife*) parties of the first part, hereby expressly waive, release, relinquish, and convey unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatsoever, in and to the above-described premises, and each and every part thereof, which is given by or results from any and all laws of this State, pertaining to the exemption of homesteads.

And the said (*name of grantor and of his wife*) for themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, and with his heirs and assigns, that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, and his heirs and assigns, the said party of the first part shall and will warrant and forever defend.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(*Signature of grantor.*) (*Seal.*)
(*Signature of wife of grantor.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF
COUNTY. } SS.

I, in and for said county, do hereby certify that (*name of grantor*) who is personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the wife of grantor*) wife of the said (*name of the grantor*) having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing been by me fully made known and explained to her, and she also by me having been fully informed of her rights, under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages, under and by virtue of any and all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this day of A.D. 19 .

(*Signature.*) (*Seal.*)

(117.)

Deed of a Corporation.

This Indenture, Made this day of A.D. 19 by and between (*name of the corporation*), a corporation organized under the laws of the State of , and whose principal office is situated in , County of , and State of party of the first part, and (*name and residence of the grantee*), party of the second part, witnesseth: —

That, the said (*name of the corporation*), party of the first part, in consideration of the sum of dollars to it paid by the party of the second part, the receipt of which is hereby acknowledged, doth hereby grant, bargain, sell, and convey unto the said party of the second part all and singular the premises hereinafter described, to wit: (*here insert location and description of the premises*), together with all the privileges and appurtenances thereto belonging.

To have and to hold the said granted premises to him, the said party of the second part, and his heirs and assigns, to their own use and behoof forever.

(*Here insert any covenant of warranty or other covenants which may be agreed upon between the parties in the same form as in deeds between individuals.*)

In witness whereof, the said (*name of the corporation*) has caused this instrument to be subscribed in its name by , its president (*or other officer authorized to make the conveyance*), thereunto duly authorized, and its corporate seal to be hereunto affixed this day and year first above written.

(*name of the corporation*)

by , its President (*or other officer*)

Witnesses (*corporate seal*)

STATE OF } ss.
COUNTY OF }

On this day of A.D. 19 , before me, a notary public (*or other official*), duly commissioned, and authorized to take acknowledgments of deeds in and for said county and State, personally appeared the above named , and acknowledged the foregoing instrument to be the free act and deed of the said (*name of the corporation*), for the uses and purposes therein set forth.

Witness my hand and notarial seal this day of A.D. 19 .

(*name of official.*)
(*Notarial seal.*) Notary Public (*or other official*).

If the deed is made in pursuance of a vote of the corporation, or of its board of directors or other governing body, a copy of such vote, certified by the recording officer of the corporation in substantially the following form, should be appended to the deed:

I, , secretary of the (*name of the corporation*), hereby certify that at a meeting of said corporation (*or of its board of directors, etc.*) a quorum being present, the following vote was passed:

" *Voted* — That , the president of this corporation, be authorized to execute, acknowledge, and deliver, in its name, a deed of the premises (*brief description, sufficient for identification*), to in such form as he may deem proper."

A true copy from the records.

Attest: ——— ———
Secretary.

It is well to add also an affidavit in substantially the following form, as in some States such affidavit is essential:

STATE OF } ss.
COUNTY OF }

On this day of A.D. 19 , before me, a notary public, duly commissioned in and for said county, and authorized by law to administer oaths, personally appeared the above named , who, being first duly sworn, doth depose and say, that he is the president (*or other official*) of the said (*name of the corporation*); that he is authorized to execute, acknowledge, and deliver deeds in the name of said corporation and on its behalf, that the said instrument was signed and sealed by him in behalf of said corporation, by its authority, and that the seal affixed to said instrument is the corporate seal of the said (*name of the corporation.*)

(If the corporation has no seal, the affidavit should so recite.)

In witness whereof I have hereunto set my hand and affixed my official seal, this day of , A.D. 19 .

——— ———
(*seal*) *Notary Public.*

(117a.)

Warranty Deed in Use in Virginia.

This Deed, made the day of A.D. 19 , between and , his wife, of , State of Virginia, grantors, and , of the county and State aforesaid, grantee, witnesseth:

That, in consideration of (*here state the consideration*), the said do (*or doth*) grant unto the said the following tract of land, to wit: (*here describe the property by situation, metes, and bounds, and insert any provisions*), with covenants of General Warranty (*or Special Warranty*).

Witness the following signatures and seals. (*Seal.*)

(*Seal.*)

(117b.)

Deed of Trust in Use in Virginia.

This Deed, made the day of A.D. 19 , between , of , grantors, of the one part, and of , trustee, of the other part, witnesseth:

That the said (*the grantors*) do grant unto the said (*the trustee*) the following property (*here describe it*): In trust to secure (*here describe the debts to be secured, or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon*).

Witness the following signatures and seals, (*Seal.*)

(*Seal.*)

(118.)

Brief Warranty Deed in use in Kentucky.

This Deed, made the day of 19 , between (*name, description, and residence of grantor, and name of grantor's wife if her relinquishment of dower is intended*) of the first part, and of the second part,

Witnesseth, That said first party, in consideration of ha bargained and sold and hereby convey unto said second party, (*here describe the premises granted as directed in Form* 107) to have and to hold said property unto said second party, heirs and assigns forever, "With Covenant of General Warranty," releasing all rights of homestead and dower.

Witness the hand of the parties, date above.

(*Signatures.*) (*Seals.*)

LOGAN COUNTY, SCT:

I, , Clerk of the County Court, do certify that the foregoing Deed was this day produced to me in my and acknowledged by to be act and deed. Given under my hand, this day of 19 .

Clerks.

By *D. C.*

(119.)

Brief Deed of Warranty in use in Arkansas.

Know all Men by these Presents, That we (*name, description, and residence of grantor*) and (*name of grantor's wife*) his wife, for and in consideration of the sum of dollars, to paid by do hereby grant, bargain, and sell unto the said and h heirs and assigns forever, the following lands, lying in the county of and State of Arkansas, to wit: (*describe the premises granted as directed in Form* 107,) to have and to hold the same unto the said and unto h heirs and assigns forever, with all appurtenances thereunto belonging.

And hereby covenant with the said that will forever warrant and defend the title to said lands against all claims whatever.

And I, wife of the said for and in consideration of the said sum of money, do hereby release and relinquish unto the said all my right of dower in and to the said lands.

Witness our hands and seals on this day of 19 .

(*Signatures.*) (*Seals.*)

STATE OF ARKANSAS,
COUNTY OF } SS.

Be it Remembered, That on this day came before the undersigned, a within and for the county aforesaid, duly commissioned and acting to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And, on the same day, also voluntarily appeared before me, the said wife of the said to me well known, and in the absence of her said husband, declared that she had of her own free will signed and sealed the Relinquishment of Dower in the foregoing deed, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such on this day of 19 .

(*Signature.*)

(120.)

Brief Warranty Deed in use in Florida.

This Indenture, Made this day of A.D., 19 , between (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, witnesseth, That the said part of the first part, for and in consideration of the sum of dollars, paid by the said part of the second part, the receipt of which is hereby acknowledged, ha granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said part of the second part, heirs and assigns, certain tract or parcel of land, situated in and described as follows, to wit: (*here describe the land or premises granted, carefully, as directed in Form* 107), together with all and singular, the hereditaments, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, to have and to hold the said premises, as above described, with the appurtenances, to the said part of the second part, heirs and assigns forever.

And the said part of the first part, for sel and heirs, executors, and administrators, do hereby covenant to and with the said part of the second part heirs, executors, administrators, and assigns, that well seized of the premises above conveyed, as of a good and indefeasible estate in fee-simple, and ha good right to sell and convey the same in manner and form as aforesaid; that they are free from all encumbrances, and that the above bargained premises, in the quiet and peaceful possession of the said part of the second part, heirs or assigns, against the claims of all persons whomsoever, will warrant and forever defend.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)
(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF FLORIDA, }
COUNTY. } SS.

I, wife of do hereby declare that I have joined with my said husband in the execution of the above deed for the purpose of relinquishing and renouncing my right of dower, and all my right, title, interest, in and to the above described premises and lands, or parcels of land. And I do hereby declare that I executed the same freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of, or from, my said husband; and that this acknowledgment is taken and made, signed, and sealed, separately and apart from my said husband, this day of A.D. 19

(*Signature.*) ***(Seal.)***

STATE OF FLORIDA, }
COUNTY. } SS.

I, a in and for the said county, do hereby certify that the foregoing declaration was taken and made by the said before me separately and apart from her husband—the said ; and that, having been, by me, made acquainted with the contents of the said deed before the signing thereof by her, and being, by me, examined separate and apart from her said husband, acknowledged that she had executed the same, and relinquished and renounced her dower, and all her right, title, and interest in and to the premises conveyed, freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of, or from, her said husband.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this day of A.D. 19

(*Signature.*)

STATE OF FLORIDA, } ss.
COUNTY. }

I, for said county, do certify that, on this day, personally appeared before me whose name appear signed to the foregoing deed of conveyance, and who personally known to me to be the identical person whose name subscribed to said deed as having executed the same, and acknowledged that had executed the same, as voluntary act and deed, for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this day of A.D. 19

(*Signature.*)

(121.)

Brief Warranty Deed in use in North Carolina.

This Deed, Made this day of 19 , by (*name and occupation of grantor*), of county, and State of to (*name and occupation of grantee*), of county, and State of Witnesseth: That said in consideration of dollars, to paid by , the receipt of which is hereby acknowledged, ha bargained and sold, and by these presents do bargain, sell, and convey to said and heirs, a tract of land in county, State of adjoining the lands of and others, bounded and described as follows, viz: (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the aforesaid tract and all privileges and appurtenances thereto belonging, to the said heirs and assigns, to only use and behoof.

And the said covenant that seized of said premises in fee, and ha right to convey the same in fee-simple, that the same are free from all incumbrances, and that will warrant and defend the said title to the same, against the claims of all persons whatsoever.

And I wife of the said grantor, for the aforesaid considerations do hereby grant and release to the said grantee and heirs, all my right of dower and all other my right, title, and interest in and to the premises above granted.

In Testimony Whereof, The said (*name of grantor and his wife*) have hereunto set our hands and seals, the day and year above written.

(*Signatures.*) (*Seals.*)

Attest:

STATE OF NORTH CAROLINA, } ss.
COUNTY. }

I, Clerk of the Court, do hereby certify that and his wife, appeared before me this day, and acknowledged the due execution of the annexed deed of ; and the said being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Let the same, with this certificate, be registered.

Witness my hand and official seal, this day of
A.D. 19 .

Clerk *Court.*

STATE OF NORTH CAROLINA, } ss.
COUNTY. }

I, Justice of the Peace, do hereby certify that and his wife, personally appeared before me this day, and acknowledged the due execution of the within deed of ; and the said being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and private seal, this day of
A.D. 19 .

, *J. P.* (*Seal.*)

STATE OF NORTH CAROLINA, } ss.
COUNTY. }

The foregoing certificate of , a Justice of the Peace of County, is adjudged to be in due form and according to law. Therefore, let the same, with this certificate, be registered.

This day of 18 .

Clerk *Court.*

(122.)

Brief Warranty Deed in use in Mississippi.

This Indenture, Made and entered into this day of in the year of our Lord, one thousand nine hundred and between (*name, residence, and occupation of the grantor*), the part of the first part and (*name, residence, and occupation of the grantee*), part of the second part, witnesseth: That the said part of the first part, for and in consideration of the sum of the receipt whereof is hereby acknowledged, ha this day granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said part of the second part, and to heirs and assigns, all and singular the following described of land situate, lying, and being in the (*here describe the land or premises granted, carefully, as directed in Form* 107).

To Have and to Hold the said of land together with all and singular the rights, privileges, and appurtenances thereunto legally and of right belonging, to the said part of the second part, and to heirs and assigns in fee-simple, absolute forever, and the said part of the first part, for heirs, executors, administrators, and assigns, covenant and agree to warrant and forever defend the right, title, interest, and possession of the estate herein granted, to the said part of the second part, heirs and assigns, against the claim or claims of any and all persons claiming or to claim the same whatsoever either in law or equity.

In Testimony Whereof, The said part of the first part ha hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

THE STATE OF MISSISSIPPI, } SS.

Personally Appeared, Before me the above named signed, sealed, and delivered the foregoing deed, on the day and year therein written, as their act and deed, for the purposes therein set forth.

(123.)

Warranty Deed in use in Missouri.

This Indenture, Made on the day of A.D. one thousand nine hundred and by and between (*name and occupation of the grantor, and name of his wife if she relinquishes dower*), of (*residence of the grantor*), part of the first part, and (*name and occupation of the grantee*), of the county of in the State of part of the second part; Witnesseth, That the said part of the first part, in consideration of the sum of dollars, to paid by the said part of the

second part, the receipt of which is hereby acknowledged, do by these presents, grant, bargain, sell, convey, and confirm unto the said part of the second part, heirs and assigns, the following described lots, tracts, or parcels of property, lying, being, and situate in the county of and State of to-wit:
(*here describe the premises granted, as directed in Form* 107).

To Have and to Hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging, or in anywise appertaining, unto the said part of the second part, and unto heirs and assigns forever: the said (*name of the grantor*), hereby covenanting that lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that ha good right to convey the same; that the said premises are free and clear of any encumbrances done or suffered by or those under whom claim; and that will warrant and defend the title to the said premises unto the said part of the second part, and unto heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF MISSOURI, } ss.
COUNTY OF }

On this day of 19 , before me personally appeared and h wi , to me well known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the day and year first above written.

My term expires 19 .

(*Signature.*) (*Seal.*)
(*Official designation.*)

FORM OF ACKNOWLEDGMENT IF THE GRANTOR IS SINGLE AND UNMARRIED.

STATE OF MISSOURI, }
COUNTY OF } ss.

On this day of 18 , before me personally appeared to me well known to be the person described in and who executed the foregoing instrument, and acknowledged that executed the same as free act and deed. And the said further declare to be single and unmarried.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in the day and year first above written.

My term expires 19 .

(*Signature.*) (*Seal.*)

(*Official designation.*)

(124.)

Brief Warranty Deed in use in Wisconsin.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and occupation of the grantor*), of the county of State of of the first part, and (*name and occupation of the grantee*) of the county of and State of of the second part. Witnesseth, That the said part of the first part, for and in consideration of the sum of dollars, to in hand paid by the part of the second part, the receipt of which is hereby acknowledged, ha given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, aliene, and confirm unto the said part of the second part heirs and assigns forever, the following described premises, real estate, lying and being in the county of State of to-wit; (*here describe the land granted, as directed in Form* 107).

Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion or reversions, remainder and remainders, and the issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said part of the first part, either in law or equity, of and to the above bargained premises, with the hereditaments and appurtenances thereto belonging.

To Have and to Hold the said premises above bargained, and described with the appurtenances, unto the said part of the second part, heirs and assigns forever. And the said for and heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said part of the second part, heirs and assigns, that at the time of ensealing and delivery of these presents, well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and ha good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever, and the part of the first part, the above bargained premises, in the quiet and peaceable possession of the said part of the second part, heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will warrant and forever defend.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on the day of A.D. 19 personally came before me the above named to me known to be the person who executed the foregoing deed, and acknowledged the execution thereof to be free act and deed for the uses and purposes therein mentioned.

(*Signature.*)

(125.)

Warranty Deed in use in Pennsylvania.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the grantor*) and (*name of the wife of the grantor*), parties of the first part, and (*name, residence, and occupation of the grantee*) party of the other part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, aliene, enfeoff, release, and confirm unto the said (*name of grantee*) his heirs and assigns, the following described parcel of land; that is to say, (*here describe carefully the premises granted, as directed in Form* 107.)

Together with all and singular the , ways, waters, water courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof: and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity or otherwise howsoever, of, in, and to the same and every part thereof.

To have and to hold the said hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances unto the said , his heirs and assigns, to and for the only proper use and behoof of the said , his heirs and assigns forever. And the said parties of the first part, their heirs, executors, and administrators, do by these presents, covenant, grant, and agree to and with the said , his heirs and assigns, that they, the said parties of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every other person or persons whomsoever lawful claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In Witness Whereof, The said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

(*Signatures.*) (*Seals.*)

Sealed and Delivered in Presence of

Received, The day of the date of the within or aforegoing Indenture of the within named

On the day of Anno Domini, 19 before me personally appeared the above named (*names of grantor and grantee*) and in due form of law acknowledged the above Indenture to be their and each of their act and deed, and desired the same might be recorded as such, and the said being of full age and separate and apart from said husband by me thereon privately examined, and the full contents of the above Deed being by me first made known unto did thereupon declare and say that did voluntarily and of own free will and accord, sign, seal, and as act and deed, deliver the above written Indenture, Deed or Conveyance without any coercion or compulsion of said husband.

Witness my hand and seal, the day and year aforesaid.

(*Signature.*) (*Seal.*)

(126.)

Full Warranty Deed in use in New Jersey.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence *and occupation of the grantor or grantors*) part of the first part, and (*name, residence, and occupation of the grantee or grantees*) part of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of lawful money of the United States of America, to in hand paid by the said part of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said part of the second part, heirs, executors, and administrators, forever released and discharged from the same by these presents, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, remise, release, convey, and confirm unto the said part of the second part, and to heirs and assigns forever, all (*here describe carefully the land or premises granted, substantially as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said part of the second part, heirs and assigns, to own proper use, benefit, and behoof forever.

And the said for heirs, executors, and administrators do covenant, grant, and agree, to and with the said part of the second part, heirs and assigns, that the said at the time of the sealing and delivery of these presents, lawfully seized in of a good absolute and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, and ha good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid.

And that the said part of the second part, heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy, the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance, of the said part of the first part, heirs or assigns, or of any other person or persons lawfully claiming, or to claim the same.

And that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever.

And also, that the said part of the first part, and heirs, and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said part of the second part, heirs and assigns; make, do, and execute, or cause or procure to be made, done, or executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said part of the second part, heirs and assigns forever, as by the said part of the second part, heirs or assigns, or counsel learned in the law, shall be reasonably devised, advised, or required. And the said heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said part of the second part, heirs and assigns, against the said part of the first part, and heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In Witness Whereof, the said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF , } ss.
COUNTY. }

Be it Remembered, That on this day of in the year one thousand nine hundred and before me personally appeared who, I am satisfied, the grantor in the within Indenture named; and I having first made known to the contents thereof, did acknowledge that signed, sealed, and delivered the same as voluntary act and deed for the uses and purposes therein expressed.

And the said being by me privately examined, separate and apart from said husband did further acknowledge that signed, sealed, and delivered the same as voluntary act and deed freely, and without any fear, threats, or compulsion of or from said husband.

(127.)

New Warranty Deed in Use in Ohio.

Know all Men by these Presents: That of County, Ohio, in consideration of to in hand paid by , do hereby grant, bargain, sell, and convey to the said h heirs and assigns forever, the following described real estate, containing acres, be the same more or less, and situate in the of in the County of and State of Ohio, to wit (*here describe carefully the land or premises granted, as directed in Form* 107):

and all the estate, title, and interest of the said grantor, either in law or in equity, in and to said premises; to have and to hold the same, together with all the privileges and appurtenances thereunto belonging, to the only proper use of said grantee , heirs and assigns forever. And the said do hereby covenant that the title so conveyed is clear, free, and unincumbered, and that will warrant and defend the same against all claim or claims of all persons whomsoever.

In Witness Whereof, the said and his wife, who hereby release right and expectancy of dower in said premises, ha hereunto set hand , this day of , A.D. one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed and acknowledged in presence of:

STATE OF OHIO, }
COUNTY, } SS.

On this day of , A.D. 19 , before me, a in and for said county, personally came , the grantor in the foregoing deed, and acknowledged the signing thereof to be voluntary act and deed.

Witness my official signature and seal, on the day and in the year last above mentioned.

(*Signature.*) (*Seal.*)

(128.)

Brief Warranty Deed in use in Minnesota.

This Indenture, Made this day of A.D. one thousand nine hundred and between (*name and occupation of the grantor*) of the County of and State of part of the first part, and (*name and occupation of the grantee*) of the County of and State of part of the second part,

Witnesseth, That the said part of the first part, in consideration of the sum of dollars, to in hand paid by the part of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey, to the said part of the second part, heirs and assigns forever, all the following described piece or parcel of land, lying and being in the County of and State of Minnesota, to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the Same, Together with all the hereditaments and appurtenances thereunto in any wise appertaining. And the said part of the first part, do covenant with the said part of the second part heirs and assigns, as follows: That lawfully seized of said premises, in fee-simple, and that good right and power to grant and convey the same; that the same free from all incumbrances, and that the said part of the second part, heirs and assigns, shall quietly enjoy and possess the same; and that the said part of the first part will warrant and defend the title to the same against all lawful claims.

In Testimony Whereof, The said part of the first part hereunto set hand and seal, the day and year above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

STATE OF MINNESOTA, } ss.
COUNTY OF }

On this day of A. D. 19 , before me the undersigned personally came to me personally known to be the identical individual described in, and who executed the foregoing deed, and acknowledged that executed the same freely and voluntarily, for the uses and purposes therein expressed.

(*Signature.*)

(129.)

Warranty (or Guaranty) Deed in use in Louisiana.

STATE OF LOUISIANA,

PARISH AND CITY OF NEW ORLEANS.

Be it Known, That on this day of in the year of our Lord one thousand nine hundred and and of the Independence of the United States of America, the one hundred and , before me, , a Notary Public in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared (*name, residence, and occupation of grantor or grantors*) who declared that for the consideration and on the terms and conditions hereinafter expressed (*he or they*) by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, liens, evictions, alienations, or other incumbrances of every nature and kind whatsoever, unto (*name, residence, and occupation of grantee or grantees*) here present heirs and assigns, and acknowledging delivery and possession thereof.

Lot of land, together with the improvements thereon, and all rights, ways, privileges, and appurtenances thereunto belonging or in any wise appertaining, situate in the (*here describe the land or premises granted, fully and accurately and substantially, as directed in Form* 107.)

To Have and to Hold the said property and appurtenances unto the said purchaser , heirs and assigns forever.

And the said vendor hereby bind and heirs forever to warrant and defend the property and appurtenances herein conveyed, against all legal claims and demands whatever.

The said vendor moreover transfer unto the said purchaser all the rights and actions of warranty to which or may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said right and actions to be by enjoyed and exercised in the same manner as they might have been by the said vendor.

This Sale is Made and Accepted for and in consideration of the price and sum of

And in order to secure the punctual payment of the said promissory note , at maturity, as well as of all interest to accrue thereon, and in order, furthermore, to secure the payment and reimbursement of any and all lawyers' fees that may be expended or incurred in the event of suit being instituted to enforce the payment of said note in principal or interest, or any part thereof (which lawyers' fees, however, are fixed at five per cent. on the amount so in suit, and said purchaser consent and agree to pay and allow the same), the said purchaser hereby specially mortgage , affect , and hypothecate the herein described and conveyed property unto and in favor of the said vendor , as well as of any and all future owner or owners of the said note ; promising and binding and heirs not to alienate, deteriorate, nor encumber the said property to the prejudice of this mortgage, nor of the special lien and vendor's privilege which the said vendor hereby retain on said property until the full and final payment of said note.

And the said declared that do by these presents, bind and obligate to cause all and singular the buildings and improvements on the herein described and conveyed property to be insured and kept insured against the risk of fire, by one of the insurance companies of this city, in the sum of dollars, until the full and final payment of the afore described , and to transfer and deliver unto the said vendor or any and all future owner or owners of the said the policy or policies of the said insurance or insurances ; in default whereof, said vendor or any and all future owner or holders of said is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said purchaser . But this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of said buildings.

According to the several certificates of the Recorder of Mortgages and the Register of Conveyances in and for this City and Parish, bearing even date herewith, and hereto annexed for reference, it appears that the said vendor has not alienated the herein described and conveyed property, and that the same is free from all mortgages or other incumbrances in his name.

And now to these Presents, personally came and appeared, Madam who after having taken cognizance of the foregoing act, which I, the said Notary, carefully read and explained to declared and said that approve and ratif the same, and that it is wish and intention to release in favor of the said purchaser , the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which may be entitled, whether by virtue of marriage with said husband, or otherwise.

Whereupon, I, the said Notary, did inform the said apart, and out of the presence and hearing of her husband, and before receiving her signature hereto, that by the laws of this State, the wife has a legal mortgage on the property of her husband: *First.* For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. *Secondly.* For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. *Thirdly.* For nuptial presents. *Fourthly.* For debts by her contracted with her husband. And *Fifthly.* For the amount of her paraphernal property alienated by her and received by her husband, or otherwise disposed of for his individual interest: That in making her intended renunciations she would deprive herself irrevocably and forever of all the rights of reclamation against the property herein described, whether under mortgage privilege or otherwise.

And the said did thereupon declare unto me, Notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by the law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature and kind whatever to which she is, or may be entitled, by any laws now or heretofore in force in the State of Louisiana.

And the said being now present, aiding and authorizing the said in the execution of these presents, the said did again declare that did and do hereby make a formal renunciation and relinquishment of all said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of said purchaser , binding and heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus Done and Passed, in my office, at New Orleans aforesaid, in the presence of and witnesses, both of this city, who hereunto sign their names with the parties, and me, the said Notary, the day and date aforesaid.

(*Signatures.*) (*Seals.*)

(130.)

Deed of Grant and Quitclaim of Property and Mining Rights, in use in California and other Mining States.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the grantor*) the party of the first part, and (*name, residence, and occupation of the grantee*) the part of the second part, Witnesseth, that the said part of the first part, for and in consideration of the sum of dollars, of the United States of America, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said part of the second part and to heirs and assigns (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all the dips, spurs, and angles, and also all the metals, ores, gold, and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and, also, all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the rents, issues, and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold, all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said part of the second part, heirs and assigns forever.

In Witness Whereof, the said part of the first part, ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

(131.)

Warranty Deed made under the Statute of Illinois.

This Indenture Witnesseth, That the grantor , (*name and occupation of the grantor*) of the (*residence of the grantor*) in the County of and State of for and in consideration of the sum of dollars, in hand paid, Convey and Warrant to (*name and occupation of grantee*) of the (*residence of grantee*) County of and State of the following described real estate, to wit, (*here describe carefully the land or premises granted, as directed in Form* 107) situated in the County of in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this day of A.D. 19 .

(*Signatures.*) (*Seals.*)

STATE OF } ss.
COUNTY OF }

I, in and for said County, in the State aforesaid, do hereby certify, that personally known to me to be the same person whose name subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal, this day of 19 .

(*Signature.*)

(132.)

West Virginia Statutory Deed, conveying Grantor's entire Interest.

This Deed, Made the day of in the year between (*here insert names of parties*)

Witnesseth, That, in consideration of (*here state the consideration*), the said doth grant unto the said all, etc. (*here describe the property and insert covenants, or any other provisions*).

Witness the following signature and seal.

(*Signature.*) (*Seal.*)

Form of Acknowledgment.

STATE OF WEST VIRGINIA, COUNTY OF . to wit:

I, , a of said county,* do certify that , and , his wife, whose names are signed to the writing above (or hereto annexed), bearing date the day of , 19 , have this day acknowledged the same before me in my said county.

Given under my hand this day of , 19 .

Justice (or Notary).

[If only the wife's acknowledgment is to be taken, after the (*) insert the following:] do certify that , the wife of whose names are signed to the writing above (or hereto annexed), bearing date the day of , 19 , has this day acknowledged the same before me in my said county.

Given under, etc.

(132a.)

Warranty Deed under Statute of Maryland.

This Deed, Made this day of in the year by me (*name of grantor*)

Witnesseth, That, in consideration of I, the said do grant unto all that (*description of property*). And I, the said covenant that I will warrant generally the property hereby conveyed, and that the said shall quietly enjoy the same.

Witness my hand and seal.

Test. (*Signature.*) (*Seal.*)

STATE OF MARYLAND, } ss.
COUNTY OF }

I hereby certify that on this day of , in the year , before the subscriber, (*here give title of officer taking acknowledgment*), personally appeared , and acknowledged the foregoing deed to be his act.

(*Signature and title.*)

(132b.)

Warranty Deed in use in South Carolina.

THE STATE OF SOUTH CAROLINA.

Know all Men by these Presents, That I, A. B., of in the State aforesaid, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto C. D., of all that (*here describe the premises*)

Together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in any wise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said C. D., his heirs and assigns forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand and seal this day of in the year of our Lord and in the year of the independence of the United States of America.

(*Signature.*) [L.S.]

Signed, Sealed, and Delivered in the presence of

THE STATE OF SOUTH CAROLINA, }
COUNTY. }

Personally appeared before me, and made oath that saw the within named sign, seal, and as act and deed, deliver the within written deed; and that with witnessed the execution thereof.

Sworn to before me, this day of 19 .

(*Signature.*)

THE STATE OF SOUTH CAROLINA,
COUNTY.

I, do hereby certify unto all whom it may concern, that Mrs. wife of the within named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any manner of compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal, this day of
Anno Domini 18 .

(*Signature.*)

(133.)

Brief Warranty Deed in use in California.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of grantor or grantors*), part of the first part, and (*name, residence, and occupation of the grantee or grantees*), the part of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of dollars of the United States of America, to in hand paid by the said part of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell, convey, and confirm unto the said part of the second part, and to heirs and assigns, forever (*here describe carefully the land or premises granted, substantially as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues, and profits thereof.

To Have and to Hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said part of the second part, and to heirs and assigns forever. And the said part of the first part, and heirs, the said premises, in the quiet and peaceable possession of the said part of the second part, heirs and assigns, against the said part of the first part, and heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In Witness Whereof, the said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

(134.)

Trust Deed, by way of Mortgage, in use in Virginia and West Virginia.

This Deed, made this day of in the year 19 , between (*name, residence, and occupation of grantor or grantors*) part of the first part, and (*name, residence, and occupation of the grantee or grantees*) part of the second part, witnesseth: That the said part of the first part do grant unto the said part of the second part, the following property, to wit, (*here describe carefully the land or premises granted, as directed in Form* 107).

In Trust to secure to of the the payment of the sum of in the event that default shall be made in the payment of either of the above-mentioned as they become due and payable, then the trustees, or either of them, on being required to do so by executors, administrators, or assigns, shall sell the property hereby conveyed. And it is covenanted and agreed between the parties aforesaid, that in case of a sale the same shall be made after first advertising the time, place, and terms thereof, for days, in some newspaper published in the , and upon the following terms, to wit: for cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said and if at the time of such sale any of the said shall not have become due and payable, and the purchase money be sufficient, such part or parts of the said purchase money as will be sufficient to pay off and discharge such remaining shall be made payable at such time or times as the said remaining will become due; the payment of which part or parts shall be properly secured; and in case the net proceeds of sale shall be insufficient to pay off all of the said in full, then the same shall be applied towards the payment of the said in the order of their maturity, intending hereby to create a priority in favor of each of said over any other which may become due and payable subsequent thereto; and if there be any residue of said purchase money, the same shall be made payable at such time, and secured in such manner as the said part of the first part executors, adminis-
in such manner as the said part of the first part executors, adminis-
trators, or assigns shall prescribe and direct, or in case of failure to give such direction, at such time and in such manner as the said Trustees, or either of them, shall think fit. The said part of the first part covenant to pay all taxes, assessments, dues, and charges upon the said property hereby conveyed, so long as or heirs or assigns shall hold the same, and hereby waive the benefit of Homestead Exemption as to the debt secured by this deed.

If no default shall be made in the payment of either of the above-mentioned then upon the request of the part of the first part, a good and sufficient deed of release shall be executed to at own proper costs and charges.

Witness the following signature and seal .

(*Signatures.*) (*Seals.*)

STATE OF VIRGINIA,
COUNTY (*or Corporation*) OF , to wit:

I, , a (*here insert title of officer*) in and for the county (*or corporation*) aforesaid, in said State of Virginia, do certify that (*here insert name or names of grantors**), whose name is (*or names are*) signed to the writing above (*or hereto annexed*) bearing date on the day of , A. D. 19 , has (*or have*) acknowledged the same before me in my county (*or corporation*) aforesaid. Given under my hand this day of , A. D. 19 .

(*Signature of officer.*)

STATE OF VIRGINIA,
COUNTY (*or Corporation*) OF to wit:

I, , a , in and for the State and county (*or corporation*) aforesaid, do certify that (*here insert the name and date of the writing and names of persons signing same on behalf of the corporation*) has (*or have*) acknowledged the same before me in my county (*or corporation*) aforesaid. Given under my hand this day of A. D. 19 .

(*Signature of officer.*)

(135.)

Deed of Trust to Secure a Debt, Payable in Gold Coin, in use in California.

This Deed of Trust, made this day of A. D. nineteen hundred between (*name, residence, and occupation of the debtor and grantor*) of the first part, and (*name, residence, and occupation of the grantee or grantees, trustee or trustees*) of part of the second part, and (*name, residence, and occupation of creditor, for whose security the trust is created*) of the third part witnesseth:

Whereas, the said ha borrowed and received of the said in gold coin of the United States, the sum of dollars, and ha agreed to repay the same on the day of A. D. nineteen hundred and to the in like gold coin, with interest, according to the terms of a certain promissory note, of even date herewith, executed and delivered therefor by the said

Now this Indenture Witnesseth, That the said part of the first part, in consideration of the aforesaid indebtedness to the and of one dollar to in hand paid by the part of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of said promissory note, and of any sum or sums of money, with interest thereon, that may be paid or advanced by, or may otherwise be due to the part of the second or third part, under the provisions of this instrument, do by these presents grant, bargain, sell, convey, and confirm unto the part of the second part in joint tenancy, and to the survivor of them, their successors and assigns, the piece or parcel of land situate in the , county of , State of , described as follows: (*here describe carefully the land or premises conveyed substantially as directed in Form* 107.)

---

* Separate acknowledgment of married woman not required.

And also, all the estate and interest, homestead, or other claim or demand, as well in law as in equity, which the said part of the first part now ha or may hereafter acquire of, in, and to said premises, with the appurtenances;

To have and to hold the same to the parties of the second part, as joint tenants (and not as tenants in common), with right of survivorship as such, and to their successors and assigns (said parties of the second part and their successors being hereby expressly authorized to convey, subject to the trusts herein expressed, the lands above described), upon the trusts and confidences hereinafter expressed, to wit:

FIRST, During the continuance of these trusts, the party of the third part and the parties of the second part, their successors and assigns, are hereby authorized to pay, without previous notice, all taxes, assessments, and liens now subsisting, or which may hereafter be imposed by national, state, county, city, or other authority, upon said premises, and on the money so borrowed as aforesaid, to whomsoever assessed, and all or any incumbrances now subsisting, or that may hereafter subsist thereon, which may in their judgment affect said premises or these trusts, at such time as in their judgment they may deem best; or in their discretion, for the benefit and at the expense of said part of the first part, to contest the payment of any such taxes, assessments, liens, or incumbrances, or defend any suit or proceeding instituted for the enforcement thereof; and in like manner to prosecute or defend any suit or proceeding that they may consider proper to protect the title to said premises, and these trusts shall be and continue as security to the party of the third part, and their assigns, for the repayment, in gold coin of the United States, of the moneys so borrowed by the and the interest thereon, and of all amounts so paid out, and costs and expenses incurred as aforesaid, whether paid by the part of the second or third part, with interest on such payments at the rate of per cent. per month until final repayment.

SECONDLY, In case the said shall well and truly pay, or cause to be paid at maturity, in gold coin as aforesaid, all sums of money so borrowed as aforesaid, and the interest thereon, and shall upon demand repay or deposit all other moneys secured, or intended to be secured hereby, and also the reasonable expenses of this trust, then the parties of the second part, the survivor of them, their successors and assigns, shall reconvey all the estate in the premises aforesaid to them by this instrument granted unto heirs and assigns, at request and cost.

THIRDLY, If default shall be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursement of any amounts herein provided to be paid, or of any interest thereon, then the said parties of the second part, or the survivor of them, their successors or assigns, on application of the party of the third part, or their assigns, shall sell the above granted premises, or such part thereof as in their discretion they shall find it necessary to sell in order to accomplish the objects of these trusts, in the manner following, namely:

They shall first publish the time and place of such sale, with a description of the property to be sold, at least a week for weeks, in some newspaper published in the county of and may from time to time postpone such sale by publication; and, on the day of sale so advertised, or to which such sale may be postponed, they may sell the property so advertised, or any portion thereof, at public auction, in any county where any part of said property may be situated, to the highest cash bidder; and the holder or holders of said promissory note, their agent or assigns, may bid and purchase at such sale.

And the part of the second part or assigns, shall establish as one of the conditions of such sale, that all bids and payments for said property shall be made in like gold coin as aforesaid, and upon such sale shall make, execute, and after due payment made, shall deliver to the purchaser or purchasers, his or their heirs and assigns, a deed or deeds of grant, bargain, and sale, of the above granted premises, and out of the proceeds thereof shall pay:

FIRST, The expenses thereof, together with the reasonable expenses of this trust, including counsel fees of dollars, in gold coin, which shall become due upon any default made by the in any of the payments aforesaid.

SECOND, All sums which may have been paid by the said or the part of the second part, successors or assigns, or the holders of the note aforesaid, and not reimbursed, and which may then be due, whether paid on account of incumbrances or insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon; next the amount due and unpaid on said promissory note, with whatever interest may have accrued thereon; and lastly, the balance or surplus of such proceeds, if any, to said heirs or assigns.

And in the event of a sale of said premises, or any part thereof, and the execution of a deed or deeds therefor, under these trusts, then the recitals therein of default and publication shall be conclusive proof of such default and of the due publication of such notice; and any such deed or deeds, with such recitals therein, shall be effectual and conclusive against the said part of the first part, heirs or assigns, and all other persons; and the receipt for the purchase-money contained in any deeds executed to the purchaser, as aforesaid, shall be a sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase-money, according to the trusts aforesaid.

In Witness Whereof, the said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

Duly Signed, Sealed, and Delivered in the presence of

(136.)

Trust Deed to Secure Payment of a Promissory Note, in use in Colorado.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and occupation of grantor or grantors*), of the county of (*residence*) and State of Colorado, part of the first part; and (*name and occupation of grantee or grantees*) of the county of (*residence*) and State of Colorado, party of the second part, witnesseth,

That Whereas, The said part of the second part, ha executed promissory note bearing even date herewith, for the sum of dollars, payable to the order of with interest thereon, from until paid, at the rate of per cent. per payable or to be counted as principal.

And whereas, the said part of the first part desirous of securing not only the prompt payment of said promissory note and the interest that may accrue thereon, in whose hands soever the same may be.

Now therefore, the said part of the first, in consideration of the premises and for the purpose aforesaid, and in the further consideration of one dollar to in hand paid by the said party of the second part, the receipt whereof is hereby confessed, ha and hereby do grant, bargain, sell, and convey unto the said party of the second part, in trust, forever, all the lands and premises situate in the county of and State of Colorado, known and described as follows, to wit: (*here describe carefully the land or premises granted, as directed in Form* 107.)

To Have and to Hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, or upon his failure to act, to his successor, in trust forever: In trust, nevertheless, that in case of default in the payment of the said promissory note or any part thereof, or the interest thereon, according to the tenor and effect of said note or in case of the breach of any of the covenants or agreements herein mentioned, then on the application of the legal holder of said promissory note or either of them, to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of the said part of the first part heirs and assigns therein, at public auction, at the in the county of and State of Colorado, or on said premises, or on any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, weeks' notice having been previously given of the time and place of such sale, by advertisement in any newspaper at that time published in said last-named county, and to make, execute, and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon, at per cent. per then to pay the principal of said note whether due and payable by the terms thereof or not, and interest due on said note up to the time of such sale, rendering the overplus (if any) unto the said part of the first part legal representatives or assigns, on reasonable request (and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money); which sale or sales so made shall be a perpetual bar, both in law and equity, against the said part of the first part, heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said part of the first part, or any of them.

And in case of any suit or proceeding at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed, he shall be allowed and paid his reasonable costs, charges, attorney's and solicitor's fees, in such suit or proceeding by said part of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, as aforesaid, with interest thereon at the rate of per cent. per if not otherwise paid by said part of the first part. And the said party of the second part, or his successor in trust, with or without re-advertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time, or any length of time, at his discretion; and also to sell the said premises *en masse* or in separate parcels, as he may prefer or think best. And the said for and heirs, executors, and administrators covenant and agree to and with the said party of the second part, and his successor in trust hereinafter named, that at the time of the ensealing and delivery of these presents well seized of said premises in fee-simple, and ha good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever.

And the said part of the first part will in due season pay all taxes and assessments on said premises; and at the request of the party of the second part will keep all buildings that may at any time be on said premises, during the continuance of said indebtedness, insured in such company or companies as the holder or holders of said note may from time to time direct; for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said part of the first part, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part, as further security for the indebtedness aforesaid. And in case of the refusal or neglect of said part of the first part, or either of them, thus to insure, or assign the policies of insurance, or to pay such taxes or assessments, said party of the second part, or his successor in trust, or the holder of said note or either of them, may procure such insurance, or pay such taxes or assessments, and all moneys thus paid, with interest thereon at per cent. per shall become so much additional indebtedness, secured by this deed of trust, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said part of the first part, and the said premises in the quiet and peaceable possession of the party of the second part or successor in trust against all and every other person lawfully claiming or to claim the whole, or any part thereof, the said part of the first part shall and will warrant and forever defend.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest, according to the tenor and effect of said promissory note aforesaid, or either of them, or any part thereof, or of a breach of any of the covenants or agreements herein by the part of the first part executors, administrators, or assigns, then and in that case, the whole of said principal sum hereby secured, and the interest thereon to the time of sale, may at once, at the option of the legal holder thereof, become due and payable, and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And it is further agreed and especially understood that in case of the death, resignation, removal, or absence from the of or refusal, or failure, or inability of said party of the second part to act, then shall be and hereby is appointed and made successor in trust of the said party of the second part, and in such event the said lands and premises shall become vested in such new trustee and all the power and authority by this indenture granted to the said party of the second part shall accrue to and be exercised by the said the same to all intents and purposes as if he had been made the party of the second part herein.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year first above written.

(*Signatures.*) (*Seals.*)

(*Witness.*)

STATE OF COLORADO, } ss.
COUNTY OF }

I, in and for said county, in the State aforesaid, do hereby certify that personally known to me as the person whose name subscribed to the annexed deed, appeared before me this day in person and acknowledged that signed, sealed, and delivered the said instrument of writing as free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this day of in the year of our Lord one thousand nine hundred and

(*Signature.*)

(137.)

Deed of Grant with Warranty against Claimants through the Grantor, in use in Delaware.

This Indenture, made the day of in the year of our Lord one thousand nine hundred and between (*name and occupation of grantor*), and his wife, of the county of and State of , of the first part, and (*name and occupation of the grantee*), of the same county and State, of the second part, Witnesseth: that the said parties of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, to them well and truly paid, by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, aliene, enfeoff, release, convey, and confirm unto the said and to his heirs and assigns, all that lot, piece, or parcel of land, (*here describe the premises granted as directed in Form* 107), Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said parties of the first part, in law, equity, or otherwise, howsoever, of, in, and to the same, and every part and parcel thereof.

To Have and to Hold the said land, messuage, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said , his heirs and assigns, to and for the only proper use and behoof of the said , his heirs and assigns, forever, and the said (*here insert the names of the grantor and his wife*), for themselves, their heirs, executors, and administrators, do by these presents covneant, grant, and agree to and with the said , his heirs and assigns, that they, the said , and their heis, all and siagular, the hereditaments and premises hereinbefore described and granted or mentioned, or intended so to be, with the appurtenances, unto the said , his heirs and assigns, against them, the said , their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, through, by, from, or under them, shall and will by these presents warrant and forever defend.

In Witness Whereof, The said have hereunto set their hands and seals. Dated the day and year first above written.

(*Signatures.*) (*Seals.*)

Sealed and Delivered in the Presence of

$ Received, the day of the date of this indenture, of the above named , full satisfaction for the consideration money.

(*Signature.*)

(*Witness at signing*) } *mentioned.*

(138.)

Brief Quitclaim Deed in use in Indiana.

This Indenture Witnesseth, That I (*name and occupation of the grantor*) of county, in the State of release and quitclaim to (*name and occupation of the grantee*), of county, in the State of for the sum of dollars, the following real estate in county, in the State of Indiana, to wit: (*here describe the land or premises granted, carefully, as directed in Form* 107).

In Witness Whereof, The said ha hereunto set hand and seal , this day of 19 .

(*Signatures.*) (*Seals.*)

Executed in the Presence of

State of Indiana, } ss.
County. }

Before me, , a in and for said county, this day of 19 , acknowledged the execution of the annexed deed.

Witness my hand and seal.

(*Signature.*) (*Seal.*)

(139.)

Brief Quitclaim Deed in use in Nebraska.

Know all Men by these Presents, That I (*or we*) (*name, residence, and occupation of grantor or grantors*), in consideration of dollars, in hand paid, do hereby grant, sell, remise, release, and forever quitclaim, unto (*name, residence, and occupation of the grantee or grantees*), the following described real estate, situate in the county of and State of (*here describe the land or premises granted, substantially as directed in Form* 107).

Together with all the tenements, hereditaments, and appurtenances to the same belonging, and all the estate, right, title, interest, dower, claim, or demand whatsoever, of the said of, in, and to the same, or any part thereof.

To Have and to Hold the above-described premises, with the appurtenances, unto the said and to heirs and assigns forever.

Signed this day of A. D. nineteen hundred and

(*Signatures.*) (*Seals.*)

In Presence of

THE STATE OF NEBRASKA, } ss.
COUNTY. }

On this day of A.D. eighteen hundred and , before me, a Notary Public, in and for said county, personally came the above-named who personally known to me to be the identical person whose name affixed to the above deed as grantor , and acknowledged the instrument to be voluntary act and deed.

Witness my hand and notarial seal the date aforesaid.

(*Signature.*)
Notary Public.

(140.)

Quitclaim Deed in use in Delaware.

Know all Men by these Presents, That I (*name, residence, and occupation of grantor*), for and in consideration of the sum of to me in hand paid, or secured to be paid by (*name, residence, and occupation of grantee*), the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim unto the said and to his heirs and assigns, forever, all that lot, piece, or parcel of land, (*here describe the land or premises quitclaimed, as directed in Form* 107).

Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of me the said either in law or equity, of, in, and to the above or aforesaid bargained premises.

To Have and to Hold the same to the said and to his heirs and assigns forever.

In Witness Whereof, I have hereunto set my hand and seal the day of in the year of our Lord eighteen hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the presence of

(141.)

Quitclaim Deed in use in Alabama.

Be it Known, That (*name and occupation of the grantor*), of the county of State of for and in consideration of the sum of dollars, lawful money of the United States of America, to in hand paid, by (*name, residence, and occupation of the grantee*,) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim unto the said (*the grantee*), in full and actual possession now being and to heirs and assigns forever, all and singular the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law as well as in equity, in possession as well as in expectancy of, in, to, or out of all and singular the following described premises. That is to say, (*here describe with sufficient care the land or premises granted, as described in Form* 107).

To Have and to Hold the said released premises unto the said (*the grantee*) heirs and assigns, to own proper use, benefit, and behoof for ever, so that neither the said (*the grantor*), heirs or assigns, nor any other person or persons in trust for or in name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatever, hereafter have, claim, challenge, or demand any right, title, interest, or estate, of, in, to, or out of the said premises above described and hereby released, but that the said heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, and demand whatsoever of, in, to, or out of the said premises, or any part thereof, are, is, and shall be, by these presents, forever excluded and debarred.

In Witness Whereof, The said ha hereunto set hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Sealed, Signed, and Delivered in the Presence of

STATE OF ALABAMA, } ss.
COUNTY. }

I, hereby certify that whose name signed to the foregoing conveyance, and who known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date

Given under my hand and seal, this day of A.D. 19.

(*Signature.*)

(142.)

Warranty Deed in use in New York.

This Indenture, Made the day of **in the** year one thousand eight hundred and between (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of lawful money of the United States, to in hand paid by the said part of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said part of the second part, heirs, executors, and administrators, forever released and discharged from the same, by these presents, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, remise, release, convey, and confirm, unto the said part of the second part, and to heirs and assigns forever, all (*here describe the premises granted as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances.

To Have and to Hold the above granted, bargained, and described premises, with the appurtenances, unto the said part of the second part heirs and assigns, to their own proper use, benefit, and behoof forever.

And the said for heirs, executors, and administrators, do covenant, grant, and agree to and with the said part of the second part, heirs and assigns, that the said at the time of the sealing and delivery of these presents, lawfully seized in of a good, absolute, and indefeasible estate of inheritance in fee-simple of and in all and singular the above granted and described premises, with the appurtenances and ha good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid: And that the said part of the second part, heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said part of the first part, heirs or assigns, or of any other person or persons lawfully claiming or to claim the same: And that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And also, that the said part of the first part, and heirs, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said part of the second part, heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said part of the second part, heirs and assigns forever, as by the said part of the second part, heirs or assigns, or their counsel learned in the law, shall be reasonably advised or required: And the said heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said part of the second part, heirs and assigns, against the said part of the first part, and heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In Witness Whereof, the said part of the first part hereunto set hand and seal the day and year first above written.

(And (*name of the wife of grantor*) signs and seals this deed in token of her relinquishment and release to the party of the second part of all her right of dower in the premises hereby granted.)

(*Signature of grantor.*) (*Seal.*)
(*Signature of grantor's wife.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF
OF } SS.
COUNTY OF

On the day of in the year one thousand nine hundred and before me personally came to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(*Signature.*)

(143.)

Bond for a Deed.

Know all Men by these Presents, That I, (*name of the obligor*) of the County of and State of am held and firmly bound to (*name of the obligee*) of the County of and State of in the sum of dollars, to be paid to said (*name of obligee*) or his executors, administrators, or assigns, to the payment whereof I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal and dated the day of A.D. 19

The Condition of this obligation is that if I the said (*name of the obligor*) upon payment of dollars, and interest thereon, as agreed and promised by said (*name of the obligee*) agreeably to his promissory note, dated 18 , and made payable as follows, to wit (*here set forth the note. If there be no note from the obligee, omit this part*), shall convey to said (*name of the obligee*) or his heirs, executors, or assigns, forever, the following described real estate, situate, lying, and being in the County of and State of to wit (*here describe carefully the land or premises granted, as directed in Form* 107), deed or deeds in common form, duly executed and acknowledged, and in the meantime shall permit said (*name of the obligee*) to occupy and improve said premises for his own use, then this obligation shall be void, otherwise it shall remain in full force.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on this day of A.D. 19 , before the undersigned, a Notary Public (*or other magistrate*), within and for the County of aforesaid, personally came (*name of the obligor*) who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as the obligor therein, and acknowledged the same to be his free act and deed, for the purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the day and year first above written.

(*Signature.*) (*Seal.*)

(144.)

Contract for Sale of Land, with Penal Obligation.

Articles of Agreement, Made and concluded this day of A.D. 19 , between of the County of and State of of the one part, and of the County of and State of of the other part, as follows:

The said (*name of the party of the first part*) for the consideration hereinafter mentioned, does for himself and for his heirs, covenant and agree with the said (*name of the party of the second part*) and his heirs and assigns, by these presents, that he, the said party of the first part, shall and will, on or before the day of A.D. 19 , at the proper costs and charges of the said party of the first part (*or of the second part, if that is agreed*), his heirs and assigns, by good and lawful deed or deeds, well and sufficiently grant, convey, and assure unto the said party of the second part, his heirs and assigns, in fee-simple, clear of all incumbrances, all that certain tract or parcel of land lying, being, and situate in the County of State of as follows, to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

In Consideration Whereof, The said (*here the name of the party of the second part*), for himself and his heirs, does covenant and agree with the said party of the first part, and with his heirs and assigns, by these presents, that he, the said party of the second part, and his heirs, or some of them, shall and will on the execution and delivery of the said deed or deeds as aforesaid, well and truly pay, or cause to be paid, unto the said party of the first part, or his heirs and assigns, the sum of dollars, in the manner following, to wit (*set forth the terms and times of payment as agreed on*). And upon (*set forth the time agreed on*) the said party of the first part shall give to the said party of the second part possession of the aforesaid premises.

And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties bindeth himself, his heirs, executors, and administrators unto the other, his executors, administrators, and assigns, in the penal sum of dollars.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of us,

(*If it is intended that this contract should be recorded, as in almost all cases it should be, an acknowledgment by both parties should follow; and the record should be like that in the next Form.*)

(145.)

Power of Attorney to Sell Lands.

Know all Men by these Presents, That I, the undersigned (*name of the selling party*) of the town (*or city*) of , County of , and State of , have this day made, constituted, and appointed, and do by these presents make, constitute, and appoint (*name of *attorney*) of the town (*or city*) of , in the County of , and State of , my true and lawful attorney, for me and in my name to sell and dispose of, absolutely, in fee-simple, the following described lot, tract, or parcel of land, or any part thereof, situate, lying, and being in the County of and State aforesaid, to wit (*here describe carefully the land or premises granted, as directed in Form* 107) for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for me and in my name, and as my act and deed, to sign, execute, acknowledge, and deliver such deed or deeds, and conveyance or conveyances, for the absolute sale and disposal thereof, or of any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements, to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by said attorney touching or concerning the premises.

In Testimony Whereof, I have hereunto set my hand and seal, on this day of , A.D. 19

(*Signature.*) (*Seal.*)

STATE OF , }
} SS.
COUNTY OF , }

Be it Remembered, That on this day A.D. 19 , before the undersigned, a notary public (*or other magistrate*) within and for the County of and State of , personally came (*the name of the principal*), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his free act and deed, for the purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the day and year first above written.

(*Signature.*) (*Seal.*)

STATE OF }
} SS. IN THE RECORDER'S OFFICE.
COUNTY OF }

I, , Clerk of the Circuit Court, and ex-officio Recorder of said county (*or whoever else is the recording officer*), do hereby certify that the within instrument of writing was, on the day of A.D. 19 , duly filed for record in this office, and is recorded in the Records of this office in Book at page

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court, at this day of A. D. 19 .

Recorder.

Per *Deputy.*

(146.)

Trust Deed for the Benefit of a Wife, or some other Person.

This Deed, Made and entered into this day of nineteen hundred and by and between (*name, residence, and occupation of the grantor*) party of the first part, and (*the name, residence, and occupation of the trustee*) party of the second part, and (*name of the wife or any person who is to have the benefit of the trust*) party of the third part, witnesseth: That the said party of the first part, in consideration of the sum of dollars, to him in hand paid by the said party of the third part, the receipt of which is hereby acknowledged, and the further sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby also acknowledged, do, by these presents, give, grant, sell, transfer, convey, and assign unto the said party of the second part, the following described tract or parcel of land, that is to say (*here describe the premises carefully, as directed in Form* 107).

To Have and to Hold the Same, With all the rights, privileges, and appurtenances thereto belonging, or in any wise appertaining unto him, the said party of the second part, his heirs and assigns forever: In trust, however, to and for the sole and separate use, benefit, and behoof of wife of (*or the name of the son or daughter, or any other person, may be substituted for that of the wife*) and the said party of the second part hereby covenants and agrees to and with the said the party of the third part, that he will suffer and permit her (*or him*), without let or molestation, to have, hold, use, occupy, and enjoy the aforesaid premises, with all the rents, issues, profits, and proceeds arising therefrom, whether from sale or lease, for her own sole use and benefit, separate and apart from her said husband, and wholly free from his control and interference, debts and liabilities, courtesy, and all other interests whatsoever; and that he will at any and all times hereafter, at the request and direction of the said (*name of the party of the third part*) expressed in writing, signed by her (*or him*) or by her (*or his*) authority, bargain, sell, mortgage, convey, lease, rent, convey by deed of trust for any purpose, or otherwise dispose of said premises, or any part thereof, to do which full power is hereby given, and will pay over the rents, issues, profits. and proceeds thereof to the said party of the third part, and that he will, at the death of the said party of the third part, convey or dispose of the said premises, or such part thereof as may then be held by him under this deed, and all profits and proceeds thereof, in such manner, to such person or persons, and at such time or times, as the said party of the third part shall, by her (*or his*) last will and testament, or any other writing signed by her, or by her authority, direct or appoint; and in default of such appointment, that he will convey such premises to (*here state what it is intended shall be done with the property at the death of the party of the third part if he or she die* *intestate*). And the said party of the third part shall have power at any time hereafter, whenever she (*or he*) shall from any cause deem it necessary or expedient, by an instrument in writing under her (*or his*) hand and seal, and by her (*or him*) acknowledged, to nominate and appoint a trustee or trustees, in the place and stead of the party of the second part above named; which trustee or trustees, or the survivor of them, or the heirs of such survivor, shall hold the said real estate upon the same trust as above recited; and upon the nomination and appointment of such new trustees, the estate in trust hereby vested in said party of the second part shall thereby be fully transferred and vested in the trustee or trustees so appointed by the said party of the third part. And said party of the first part hereby covenants to warrant and defend the title to the said real estate against the lawful claims of all persons whomsoever, to the said parties of the second and third parts, their heirs and assigns. And the said party of the second part covenants faithfully to perform and fulfil the trust herein created.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

THE STATE OF } ss.
COUNTY OF }

Be it Remembered, That on the day of eighteen hundred and , before me, the undersigned came (*the persons who execute the instrument*) who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their free act and deed for the purposes therein mentioned.

(*Signature.*)

(147.)

Trust Deed to Secure Payment of a Note without Release of Homestead or Dower.

This Deed, Made and entered into this day of nineteen hundred and by and between (*name and occupation of the grantor who is the debtor*) of the County of State of , party of the first part, and (*name and occupation of the trustee*) of the County of State of party of the second part, and (*name and occupation of the creditor for whose benefit the deed is made*) of the County of State of party of the third part:

Witnesseth, That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, the following described real estate, situate, lying and being in the County of and State of , to wit (*here describe carefully the land or premises granted, as described in Form* 107.)

To Have and to Hold The same, with the appurtenances, to the party of the second part, and to his successor or successors in this trust, and to him and his heirs, and his and their grantees and assigns forever.

In Trust, However, for the following purposes: Whereas the said party of the first part has this day made, executed, and delivered to the said party of the third part, his promissory note , of even date herewith, by which he promises to pay to the said (*name of the creditor*) or order, for value received, $\frac{}{100}$ dollars, in (*the days or months when the note is payable*).

Now Therefore, If the said party of the first part, or any one for him, shall well and truly pay off and discharge the debt and interest expressed in the said note and every part thereof, when the same becomes due and payable according to the true tenor, date, and effect of said note , then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but, should the said first party fail or refuse to pay the said debt, or the said interest, or any part thereof, when the same or any part thereof shall become due and payable, according to the true tenor, date, and effect of said note , then the whole shall become due and payable, and this deed shall remain in force; and the said party of the second part, or in case of his absence, death, refusal to act, or disability in any wise, the (then) acting sheriff of County, , at the request of the legal holder of the said note , may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at in the of County, , for cash, first giving days' public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the of , and upon such sale shall execute and deliver a deed in fee-simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale; and any statement of facts or recital by the said trustee, in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as *primâ facie* evidence of such fact; and such trustee shall, out of the proceeds of said sale, pay, first, the cost and expenses of executing this trust, including legal compensation to the trustee for his services, and next shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid, and the remainder, if any, shall be paid to the said party of the first part, or his legal representatives. And the said party of the second part covenants faithfully to perform and fulfil the trust herein created, not being liable or responsible for any mischance occasioned by others.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of party of the first part.*) (*Seal.*)
(*Signature of party of the second part.*) (*Seal.*)
(*Signature of party of the third part.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of us

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on this day of A. D. 19 , before the undersigned, a within and for the County of and State of , personally came (*names of all the parties executing the deed*) who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and acknowledged that they executed the same for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereto set my hand and affixed my official seal at my office in the day and year first above written.

(*Signature.*) (*Seal.*)

(148.)

Deed of Trust to Secure a Debt; Fuller Form, and with Release of Dower.

This Deed, Made and entered into this day of nineteen hundred and , by and between (*name and occupation of the debtor who is grantor*) and (*name of the wife of the grantor*) of (*residence*) parties of the first part, and (*name of the grantees who are the trustees*) of (*residence*) parties of the second part, and (*name, residence, and occupation of the creditor for whose benefit the trust is created*) of party of the third part, witnesseth, that the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm, unto the said parties of the second part, the following-described real estate, to wit: (*here describe carefully the land or premises granted, by metes and bounds, as directed in Form* 107.)

To Have and to Hold the same, with the appurtenances, to the said parties of the second part, and to the survivor of them, and to their successor hereinafter designated, and to the assigns of the said parties of the second part, or of said survivor, or of said successor and his heirs forever.

In Trust, however, for the following purpose: Whereas the said (*name of the grantor*) (*here describe the debt, and if a promissory note is given, describe that, or set forth a copy of it*) and has also agreed and covenanted to and with the said party of the third part, and his indorsees or assignees, to cause all taxes and assessments, general and special, to be paid within the times required by law, whenever imposed upon said property, and has also further covenanted and agreed to and with said party of the third part, his indorsees or assignees, that he will keep the improvements upon said property constantly insured in some good and responsible insurance office or offices, to be approved by said party of the third part, his indorsees or assignees, in a sum not less than dollars, until said notes are (*or note is*) fully paid, and will assign the policy or policies of insurance to said party of the third part, his indorsees or assignees, with full power to demand, receive, and collect any and all moneys accruing under said insurance, and the same to apply to the payment of said notes and the interest that may accrue thereon, unless otherwise paid, when the same become due, and has also covenanted and agreed to and with said party of the third part, his indorsees or assignees, that there shall not, at any time while said notes remain unpaid, be any mechanics' liens filed or taken upon the real estate herein described, or upon the buildings which now are, or may hereafter be, erected upon said real estate, and that should said party of the first part fail or neglect to pay said taxes, when the same are by law due and payable, or fail or neglect to effect insurance and assign the policy or policies as above provided, or fail or neglect to keep said real estate free from mechanics' liens, the said party of the third part, his indorsees or assignees, may, at his option, consider the notes above mentioned and described, as having each and all become due and payable, though not then due by the tenor and effect thereof, and may require the said parties of the second part, or the survivor of them, or their successor in trust, to sell the property above described as hereinafter provided, or may pay said taxes, or the premium for such insurance, or the amount of said mechanics' liens, and the amount or amounts so paid, together with interest thereon, at the rate of (ten) per cent. per annum, shall be taken and considered as a part of the amount secured hereby, and to be paid and refunded out of the proceeds of sale, should such sale be made, as hereinafter provided.

Now, if the said notes be well and truly paid, as the same severally become due and payable, according to the tenor and effect of said notes, and each of them, and if the said covenants and agreements in regard to taxes, insurance, and mechanics' liens be faithfully kept and performed, and all moneys paid by said third party, his indorsees or assignees, on account of said taxes, insurance, and mechanics' liens, are refunded, with the interest thereon, as above provided, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but should default be made in the payment of the said notes, or either of them, or any part of either of them, or of the interest that may accrue thereon, or any part thereof, as the same severally become due and payable, or if the said parties of the first part fail or neglect to pay said taxes, when due and payable, or to insure the buildings on said property, or to keep the same free from mechanics' liens, as provided in the foregoing covenants and agreements, or to refund to said party of the third part, his indorsees or assignees, the amount paid by him or them for said taxes, insurance, or mechanics' liens, with interest thereon, as above provided, then this deed shall remain in force, and the said parties of the second part, or either of them, or the survivor of them, or in the event of the death of both of them, or absence from this State, or their refusal to act, or other disqualification for the performance of the duties of this trust, then, at the request of the holder of said notes, the sheriff of the county of for the time being (who shall thereupon become the successor of said trustees, and of the survivor of them, to the title of said property, and the same become vested in him, in trust for the purposes and objects of these presents, with all the powers, duties, and obligations thereof), may proceed to sell said described property, or any part thereof, at public vendue, to the highest bidder, for cash, at the (*state the place of sale*) first giving twenty days' public notice of the time, terms, and place of said sale, and the property to be sold, by advertisement in some newspaper printed in the English language, and published in the county of and upon such sale, the said parties of the second part, or either of them, or the survivor of them, or their successor in trust, the sheriff of said county, as the case may be, shall execute and deliver a deed or deeds, in fee-simple, of the property sold, to the purchaser or purchasers thereof (a recital wherein of the request of the holder of said notes that they should proceed to sell, of the publication of said notice, and in case of sale by the sheriff of said county, of the happening of any or either of the events making him successor in this trust, shall be received in all courts of law or equity, and to all intents and purposes, as full and sufficient proof thereof), and shall receive the proceeds of said sale, out of which shall be paid, first, the cost and expenses of executing this trust, including compensation to said trustee, or said sheriff, for their or his services, next the amount paid by said party of the third part, or his indorsees or assignees for taxes, insurance, or mechanics' liens, with (ten) per cent. per annum interest thereon, from the date of the payment thereof, and next, the amount remaining unpaid upon the principal note above described, together with all the interest notes then due, and so much of the interest note, next falling due, as may be necessary to satisfy the interest on said principal note at the rate of per cent. per annum from the date when the preceding interest note became due, up to the day of sale, it being distinctly understood and agreed between the parties hereto, that the failure to pay any one of said notes, principal or interest, when due and payable, shall cause the principal note to become immediately due and payable, though not then due by the terms, tenor, or effect thereof, and the remainder, if any, shall be paid to the said parties of the first part or their legal representatives.

And the said parties of the second part covenant faithfully to perform and fulfil the trust herein created.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of grantor.*) (*Seal.*)
(*Signature of grantor's wife.*) (*Seal.*)
(*Signature of trustee.*) (*Seal.*)
(*Signature of other trustee.*) (*Seal.*)
(*Signature of creditor.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on this day of eighteen hundred and before me, the undersigned, came (*name of the parties who execute the deed*) who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned.

And the said having been by me first made acquainted with the contents of said instrument, on an examination separate and apart from her husband, acknowledged that she executed the same freely and without compulsion or undue influence of her said husband.

In Testimony Whereof, I have hereunto set my hand and seal of office the day and year first above written.

(149.)

Trust Deed to Secure a Note, Shorter Form, but with Warranty, and Release of Homestead and Dower.

This Indenture Witnesseth, That (*name, residence, and occupation of grantor*) and (*name of the wife of grantor*) wife of the grantor herein, in consideration of the indebtedness hereinafter mentioned, and one dollar ($1) to them paid by (*name, residence, and occupation of the trustee*) grantee , the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, remise, release, and convey unto the said grantee , the following described lot , piece , or parcel of land, situate in the county of and State of to wit: (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the same, with all the privileges thereunto or in any wise appertaining, and all the estate, right, title, interest, claim, or demand in and to the same, either now or which may be hereafter acquired, unto the said grantee, his heirs and assigns. In trust, nevertheless, for the following purposes:

Whereas, The said (*name of the grantor*) grantor herein, is justly indebted upon a certain promissory note, bearing even date herewith, payable to the order of (*here describe the note.*)

Now, in case of default in the payment of said note, or any part thereof, or the interest accruing thereon, according to the tenor and effect thereof, or in the payment of any taxes or assessments, ordinary or special, which may be levied or assessed against said premises during the continuance hereof, on the application of the legal holders of the said note, the said grantee (full power being hereby given), or his legal representatives, after having advertised such sale days in a newspaper published in or by posting up written or printed notices in four (4) public places in the county where said premises are situate (personal notice being hereby expressly waived), shall sell the said premises, or any part thereof, and all the right and equity of redemption of the said grantor, or his heirs, executors, administrators, or assigns therein, at public vendue, to the highest bidder for cash, at at the time appointed in the said advertisement, or may adjourn the sale from time to time at discretion and as the attorney of said grantor, for such purpose hereby constituted irrevocable, or in the name of the said grantee or his legal representatives, shall execute and deliver to the purchaser or purchasers thereof, deeds for the conveyance in fee of the premises sold, and shall apply the proceeds of sale (1st) to the payment of all advances made by the said party of the second part for taxes and assessments; and expenses for advertising, selling, and conveying as aforesaid, including attorney's fees, and (2d) the amount due on said note, (3d) rendering the overplus, if any there be, to the said grantor or legal representatives, at the office of the said grantee in and it shall not be the duty of the purchaser to see to the application of the purchase money.

And the said (*names of the grantor and of his wife*) parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, the said grantee, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads: Provided, that the said grantor and his heirs and assigns may hold and enjoy said premises, and the rents, issues, and profits thereof, until default shall be made as aforesaid, and that when the said note and all expenses accruing hereby shall be fully paid, the said grantee or his legal representatives, shall reconvey all the estate acquired hereby in the said premises, or any part thereof, then remaining unsold, to (and at the cost of) the said grantor, or his heirs or assigns.

And the said grantor covenants with the said grantee and with his legal representatives and assigns that he is seized in fee of the said premises, and has good right to convey the same in form aforesaid, that they are free from all liens or incumbrances of whatever name or nature, and that he will warrant and defend the same against all claims whatsoever, and will pay all taxes or assessments levied or assessed on the said premises, or any part thereof, during the continuance hereof, and pay the same ten days before the day of sale thereof.

Witness the hands and seals of the said (*names of the grantor and his wife*) this day of A.D. 19 .

(*Signature of grantor.*) (*Seal.*)
(*Signature of wife of grantor.*) (*Seal.*)

In Presence of

STATE OF } ss.
COUNTY.

On the day of nineteen hundred and before me of the County of in the State of appeared (*name of the grantor*) personally known to me to be the real person whose name is subscribed to the foregoing deed of trust, as having executed the same, and then acknowledged the execution thereof as his free act and deed for the uses and purposes herein mentioned.

And the said (*name of the wife of grantor*) (who is personally known to me to be the same person who subscribed the said instrument of writing), having had the contents of the said instrument made known and fully explained to her, and she also by me being fully informed of her rights under the Homestead Laws of the State, and being by me examined, separate and apart from her said husband, did acknowledge said instrument to be her free act and deed ; that she executed the same, and relinquished her dower in the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, voluntarily and freely, and without the compulsion of her husband, and that she does not wish to retract.

Given under my hand and official seal, this day of A.D. 19 .

(*Signature.*) (*Seal.*)

(150.)

Deed from Trustees.

This Deed, Made and entered into this day of A.D. nineteen hundred and by and between (*names of trustees*) party of the first part, and (*name, residence, and occupation of grantee*) party of the second part, witnesseth, that whereas (*name of the party who conveyed the estate to the trustees*) by deed dated the day of 19 , recorded in the Recorder's office of County, State of in book conveyed the property hereinafter described in trust to said (*name of trustees*) to secure the payment of certain promissory notes in said deed described, and whereas (*here describe the non-payment or other default which has authorized the sale by the trustees*) and the party herein of the first part, at the request of the legal holder of said promissory notes acting in pursuance of the provisions of said deed of trust, and having first given days' public notice of the time, terms, and place of sale, and of the property to be sold, by an advertisement inserted on the day of A.D. in the a daily newspaper printed in the city of and continued to the day of sale (as will appear by the copy of said advertisement and affidavit of publication thereof hereto annexed as a part of this deed) did proceed to sell the property described in said deed at public vendue to the highest bidder for cash at in the city of on the day of 19 , between the hours of ten o'clock in the morning and five o'clock in the afternoon of said day, when and where the same was struck off to (*the name of the purchaser who is the grantee*) as the highest and last bidder therefor, at the price and sum of dollars, full payment whereof is hereby acknowledged; now, said party of the first part, by virtue of the proceedings aforesaid, and in consideration of the sum of dollars to him in hand paid by said party of the second part, does by these presents bargain, sell, and convey to said (*name of the grantee*) all the right, title, and interest (which by virtue of said trust deed and the proceedings aforesaid he may or can bargain, convey, or sell) in and to the property described in said deed of trust, to wit (*here describe the land or premises granted in the same way in which they are described in the deed of trust under which the trustees act.*)

To Have and to Hold the said described premises unto said (*name of the purchaser*) and unto his heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereto set his hand and seal the day and year first herein above written.

(*Signatures.*) (*Seals.*)

In Presence of

STATE OF , }
COUNTY. } ss.

Be it Remembered, that on this day of A.D. 19 , before me, the undersigned, personally came who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

(*Signature.*)

(151.)

Deed of Master in Chancery.

This Indenture, Made this day of A.D. 19 , between (*name of grantor*) Master in Chancery, in and for the County of and State of , of the first part, and (*name of grantee*) of the second part, witnesseth: That whereas, at the term of the court of the said County of and State of , in the year of our Lord A.D. 19 , in a certain suit and proceedings in chancery, pending in said court, wherein were complainants, and were defendants, to obtain a decree for the sale of the property hereinafter described, and for other relief, it was ordered, adjudged, and decreed by the court, that (*here set forth the decree under which the sale is made*) and the Master in Chancery, in and for the County of and State of was appointed to execute the said decree, and to make, execute, and deliver to the complainants a deed to the said premises as aforesaid, conveying to (*the name, residence, and occupation of the grantees*) all the interest and title of the defendant to said premises.

Now, therefore, Know all Men by this Deed, That I, Master in Chancery as aforesaid, in consideration of one dollar, to me paid by the said party of the second part, the receipt whereof I acknowledge before the execution hereof, and by virtue of the decree aforesaid, have granted, bargained, and sold, and do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns forever, the following-described real estate, lying in the County of and State of to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the said premises, with all the appurtenances thereto belonging, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, The said Master in Chancery of County, in the State of , has hereto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

In Presence of

STATE OF , }
COUNTY. } SS.

I, clerk of the county court in and for the County of and State of , do hereby certify, that the above-named whose name appears signed to the foregoing deed is personally known to me to be the same person described therein, and acknowledged to me that, as master in chancery aforesaid, he executed the said deed freely for the uses and purposes therein mentioned.

Given under my hand and official seal at this day of A.D. 19 .

(*Signature.*) *Clerk.* (*Seal.*)

(152.)

Sheriff's Deed on Execution, in use in the Western States.

Whereas, (*the name of the plaintiff in the suit in which the execution issued*) did at the term, A.D. nineteen hundred and of the court for the County of in the State of , recover a judgment against (*name of the defendant* *in that suit*) for the sum of and costs of suit, upon which judgment and execution was issued, dated on the day of A. D. nineteen hundred and directed to the sheriff of County, to execute, and by virtue of said execution (*name of the sheriff*) of then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to (*name of the purchaser at the sheriff's sale*) he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law.

And the said (*name of the purchaser*) having duly assigned his certificate of purchase to (*name of the grantee*)

Now therefore, Know all by this Deed, That I, (*name of the sheriff*) sheriff of said County of in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said (*name of the grantee*) his heirs and assigns, the following described tract of land, to wit (*here describe carefully the land or premises granted, as directed in Form* 107).

To Have and to Hold the said described premises, with all the appurtenances thereto belonging, to the said (*name of the grantee*) and his heirs and assigns forever.

Witness my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

In Presence of

Sheriff of County.

STATE OF , } ss.
COUNTY OF }

I, clerk of the court of County, do certify that sheriff of County, personally known to me to be the real person whose name is subscribed to the within annexed deed, this day acknowledged before me that he executed the said deed, as such sheriff, voluntarily and freely, for the use and purposes therein set forth.

Given under my hand, and the seal of said court, this day of nineteen hundred and

(*Signature.*) *Clerk.* (*Seal.*)

(153.)

Sheriff's Deed, in use in New England.

Know all Men by these Presents, That I (*name of the deputy sheriff selling*) of in the County of and State of , and a deputy sheriff under (*name of the sheriff*), Esq., sheriff of said county, having, on the day of in the year of our Lord one thousand nine hundred and , by virtue of a writ of execution, which was issued upon a judgment, recovered at the term of the court holden at within and for the County of on the in the year of our Lord nineteen hundred and , by *(name of the plaintiff in the suit)* of in the County of against *(name of the defendant in the suit)* of in the County of for the sum of dollars and cents damage and costs of suit taxed at dollars and cents, seized and taken all the right in equity which the said had on the day of in the year of our Lord eighteen hundred and being the time when the same was attached on mesne process of redeeming the following-described mortgaged real estate, to wit: *(here describe carefully the land or premises granted, as directed in Form* 107) and having on the day of last, being thirty days at least before the time of the sale hereinafter mentioned, given notice in writing to the said *(name of the defendant)* of the time and place of sale, and having posted up notifications thereof in one public place in said town of and in one public place in each of the towns of and being two towns adjoining said town of and also having caused an advertisement of the time and place of sale, to be published three weeks successively, before the day of sale, in the public newspaper called the printed at in said county of on the day of in the year of our Lord nineteen hundred and made sale of said right in equity of redemption at public auction, to *(name of the purchaser)* of in ; he being the highest bidder for the same, for the sum of dollars. Now, therefore, in consideration of said sum of dollars to me paid by the said *(name of the purchaser)* the receipt whereof I do hereby acknowledge, I have given, granted, bargained, and sold, and do, by these presents, give, grant, bargain, sell, and convey to the said *(name of the purchaser)* his heirs and assigns forever, all the right in equity which the said *(name of the defendant)* had of redeeming the aforesaid mortgaged real estate, at the time aforesaid To have and to hold the same to the said *(name of purchaser)* his heirs and assigns, to his and their use forever; subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said *(name of grantor)* in my said capacity of deputy sheriff, do covenant with the said *(name of purchaser)* as aforesaid, that, in making said sale, and in everything concerning the same, I have complied with, and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said *(name of the purchaser)* that the said *(name of the defendant)* had any right, title, or interest in said estate at the time aforesaid.

In Witness Whereof, I, the said in my said capacity of deputy sheriff, have hereunto set my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

ss. 19 . Then the above-named personally appeared, and acknowledged the above instrument by him signed, to be his free act and deed. Before me,

Justice of the Peace.

(154.)

Sheriff's Tax Deed, in use in the Western States.

Know all Men by these Presents, That whereas, at the Term , A.D. 19 , of the Court of County, a judgment was obtained in said court, in favor of the State of against the following-described lot , piece , or parcel of land, for the sum herein specified, to wit, the sum of (*here state in writing the amount of the tax*); said sum being the whole amount of taxes, interest, and costs assessed upon said lot , piece, or parcel of land, for the year 18

And whereas, on the day of A.D. 19 (*name of the collector of taxes*) then collector of taxes of the county aforesaid, by virtue of a precept or order issued out of the Court of the county aforesaid, dated the day of A.D. 19 , and directed to the said as aforesaid, did expose at public sale, at the Court-House, in the county aforesaid, in conformity with all the requirements of the statutes in such case made and provided, the said lot , tract ,or parcel of land above described, for the satisfaction of the judgment so rendered, as aforesaid. And whereas, at the time and place aforesaid (*name of the purchaser*) of the County of and State of having offered to pay the aforesaid sum, amounting to the sum of dollars and cents, for the (*here state what part or portion of the land was sold*) of said lot , piece, or parcel of land, as follows, to wit, the sum of dollars cents, which was the least quantity of said lot , piece, or parcel of land bid for the said lot , tract , or parcel of land was stricken off to (*name of the purchaser*) at that price. And whereas, the said purchaser has now made and delivered to me an affidavit of having complied with all the requirements of the statute and constitution of the State of necessary to entitle said purchaser to a deed for the premises so sold to him as aforesaid; and whereas the said (*name of the purchaser*) has duly assigned the certificate of purchase of the land above described, unto (*the name of the grantee*): Now, therefore, I, sheriff of the county of for and in consideration of the said above-named sum, amounting to the sum of dollars and cents, paid to (*the collector of taxes*) of said county of by the said (*the name of the purchaser*) at the time of the aforesaid sale, and in consideration of (*the amount of costs and fees*) $\frac{}{100}$ dollars to me paid by said (*name of grantee*) and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said (*name of the grantee*) his heirs and assigns, the premises so sold as aforesaid, situated in the County of and State of to wit (*here describe carefully the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks or monuments*).

To Have and to Hold unto him, the said (*the name of the grantee*) his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In Witness Whereof, I sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this day of A.D. 19 .

(*Seal.*)

Sheriff of County.

STATE OF } ss.
COUNTY OF }

I, in and for said County and State, do certify that sheriff of said county, who is personally known to me to be the real person who executed and subscribed his name to the foregoing deed, appeared before me this day, and acknowledged that he had executed the same as such sheriff, freely and voluntarily, for the uses and purposes therein set forth.

In attestation whereof, I have hereunto set my hand and attached the seal of our said court, at my office in in said County and State, this day of A.D. 19 .

(*Signature.*) Clerk. (*Seal.*)

(155.)

Deed of Executor, in use in the Eastern States.

Know all Men by these Presents, That whereas (*name of the executor*) in the County of and State of executor of the last will of (*name of the testator*) late of deceased, by an order of the Court of Probate, held at within and for the County of on the day of in the year one thousand nine hundred and was licensed and empowered to sell and pass deeds to convey certain real estate of the said deceased; and whereas, the said executor having given public notice of the intended sale, by causing notifications thereof to be published once a week, for three successive weeks prior to the time of sale, in the newspaper called the printed at and having first taken the oath and given the bond by law in such cases required, did on the day of in the year one thousand eight hundred and pursuant to the order and notice aforesaid, sell by public auction the real estate of the said deceased hereinafter described, to (*name, residence, and occupation of the purchaser*) for the sum of dollars $\frac{}{100}$ he being the highest bidder, therefor.

Now, therefore, Know ye, That I, the said executor as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of dollars $\frac{}{100}$ paid by the said (*name of the purchaser*) the receipt whereof is hereby acknowledged, do, by these presents, give, grant, sell, and convey unto the said (*here describe carefully the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks or monuments, and refer to the deed of the land to the testator, under which he held it*).

To Have and to Hold the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him the said (*name of purchaser*) and his heirs and assigns, to his and their use and behoof forever. And I the said (*name of executor*) for myself and my heirs, executors, and administrators, do hereby covenant with the said (*name of purchaser*) and his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath and gave the bond by law required, previous to fixing on the time and place of sale.

In Witness Whereof, I, the said executor as aforesaid, have hereunto set my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in presence of

ss. A.D. 19 . Then personally appeared the above-named executor and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Justice of the Peace.

(156.)

Deed of Executor, in use in the Middle States.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name of executor*) executor of the last will of (*name and residence of testator*) of the first part, and (*name, residence, and occupation of the purchaser, who is the grantee*) of the second part, witnesseth, that the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and for and in consideration of the sum of   lawful money of the United States of America, to him in hand paid at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, release, convey, and confirm unto the said party of the second part, and his heirs and assigns forever, all (*here describe carefully the land or premises granted, by metes and bounds, and contents or quality, or boundary marks or monuments, and refer to the deed of the land to the testator, under which he held it.*)

Together with all and singular the edifices, buildings, rights, members, privileges, advantages, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party of the first part hath, by virtue of the said last will and testament, or otherwise, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof forever. And the said party of the first part, for himself and for his heirs, executors, and administrators, does for himself and for his heirs, executors, and administrators, covenant, grant, promise, and agree to and with the said party of the second part, and his heirs and assigns, that the said party of the second part, his heirs and assigns, shall and lawfully may from time to time, and at all times forever hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy all and singular the said hereditaments and premises hereby granted and conveyed, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, hindrance, molestation, interruption, or denial whatsoever, of, from, or by them the said party of the first part, his heirs or assigns; or of, from, or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim hereafter, by, from, or under him, or by, from, or under his right, title, interest, or estate. And that free and clear, and freely and clearly discharged, acquitted, and exonerated, or otherwise well and sufficiently saved, defended, kept harmless, and indemnified by them, the said party of the first part, his heirs and assigns, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, judgments, and all other charges and incumbrances whatsoever, had, made, committed, executed, or done by him the said party of the first part, or by, through, or with his acts, deeds, means, consent, procurement, or privity.

In Witness Whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

(*Signature of party of the first part.*) (*Seal.*)
(*Signature of party of the second part.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF , } ss.
COUNTY. }

This day personally appeared before the undersigned, (*name and office of the magistrate*) within and for the county and State aforesaid, (*name of the executor*) executor of the estate of (*name of deceased*) deceased, who is personally known to me to be the person whose name as such is subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor subscribed to the foregoing deed, as having executed the same and acknowledged that he had as such executor executed the same for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and seal, at my office in said county, this day of A.D. 19

(*Signature.*) (*Seal.*)

(158.)

Deed of Administrator of Intestate.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and residence of administrator*) administrator of the goods and estate of (*name of intestate*) of who died intestate, party of the first part, and (*name, residence, and occupation of the grantee*) of the County of and State of party of the second part:

Whereas, at the term, A.D. 19 of the court, within and for the County of and State of in a certain petition or cause therein pending, in which the said (*name of the grantor*) administrator of the goods and estate of (*name of the deceased*) deceased, was petitioner, and (*names of the defendants who are minor children of the deceased, and of the widow of deceased, and of the guardian of the minors*) were defendants, the following order and decree were rendered, that is to say:

STATE OF ,)
} SS.
COUNTY.)

In Court Term, A.D. 19

(name of the administrator) administrator of the goods and estate of *(name of deceased)* deceased. *vs.* *(names of the defendants, who should be the widow and heirs of the deceased.)*

And now comes the petitioner by his solicitor and presents his petition herein, and it satisfactorily appearing to the court that the defendants have been duly served with summons herein by the sheriff of county, and that the defendants are non-residents of the State of and have been duly notified of this proceeding by publication as required by law, it is therefore ordered by the court, that the said defendants be called. And they, being three times solemnly called, came not, nor any one for them, but herein failed and made default: which it ordered to beentered of record: and it further appearing to the court that the said *(names of defendants who are minors)* are minors, and have a guardian, to wit, the said *(name of the guardian)*. And afterwards the said *(name of guardian)* as such guardian comes and files his answer herein, neither admitting nor denying the allegations in said petition contained, but reserving the right of said minor by requiring proof. And this cause having been brought on to be heard upon the petition herein taken as confessed by the answer of said guardian and the exhibits and proofs, and the testimony of *(name of the witness or witnesses called in the case)* witness duly sworn, who testified herein in open court, and it satisfactorily appearing to the court from the evidence that the said *(name of the deceased)* departed this life on or about the day of A.D. 19 , leaving *(name of his widow)* his widow and *(name of his children)* his children and only heirs at law; that the petitioner herein was duly appointed administrator of the goods and estate of said *(name of deceased)* deceased, and that letters of administration were duly granted to him by this court, bearing date on the day of A.D. 19 , and the court having ascertained that said petitioner as aforesaid has made a just and true account of the condition of the estate of said deceased to this court, and that the personal estate of said deceased is not sufficient for the payment of the debts of the said *(name of the deceased)* deceased: and the court having found the amount of the deficiency aforesaid to be the sum of dollars, besides interest and costs, and it further appearing to the court that the said *(name of the deceased)* died seized of the following described real estate, situate in the County of and State of , to wit: *(here describe carefully the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks or monuments, and refer to the deed of the land to the deceased, under which he held it)* and the court having ascertained that it will be necessary to sell the said real estate to pay the deficiency aforesaid, with the expenses of administration now due and to accrue; it is therefore ordered, adjudged, and decreed, that the said petitioner proceed, according to law, to advertise and make sale of the real estate above described, or as much thereof as may be necessary to pay the debts now due from said estate, and the costs of administration now due and to accrue. And it is ordered and decreed by the court, that said sale shall be made on the following terms, viz.: (*here set forth the terms, place, time, and manner of the sale as prescribed in the decree*) which terms shall be distinctly set forth in all the advertisements of said sale.

It is further ordered that upon such a sale being made, that said (*name of said administrator*) shall make and execute to the purchaser or purchasers of said real estate, good and sufficient deed or deeds to convey the interest of said deceased therein at the time of his decease, and that said (*name of the administrator*) report his action in the premises with all convenient speed. And it is further ordered, that his cause stand continued for said report.

And Whereas, In pursuance of said order and decree, the said party of the first part did, on the day of A.D. 19 , between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of such day, at (*place of sale*) expose to sale by public vendue, to the highest bidder, the lands and real estate so ordered to be sold, in said decree, having first given notice of the time, terms, and place of such sale, with a description of such lands and real estate, according to the terms and requirements of said order and decree, and of the statute regulating such sales, as will more fully and at large appear by the report of such sale, made by said party of the first part, as administrator as aforesaid, to the said court.

And Whereas, At such sale, the said party of the second part became the purchaser of the following described lands and real estate, being the highest bidder therefor, at the following price; that is to say (*here state what part, or the whole, of the above-described lands were sold, and at what price*).

Now Therefore, This indenture witnesseth, that the said party of the first part, by virtue of the order and decree aforesaid, and in consideration of the premises, and for the further consideration of the sum of dollars, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, the lands and real estate last above described as having been sold to the said party of the second part, to have and to hold the same with all the appurtenances thereunto belonging, or in anywise appertaining, to the only proper use, benefit, and behoof of the said party of the second part, and his heirs and assigns forever. And the said party of the first part, for the consideration aforesaid, covenants with the said party of the second part, and his heirs and assigns, that he has in all respects complied with the order and decree aforesaid, and with the directions of the law generally in such case made and provided.

In Witness Whereof, The said party of the first part as administrator as aforesaid, has hereunto set his hand and seal the day and year first above written.

(*Signature.*) (*Seal.*)

Administrator of (*name of deceased*) as aforesaid.

In Presence of

STATE OF
COUNTY. } SS.

This day personally appeared before the undersigned. within and for the county and State aforesaid, executor of the estate of (*name of deceased*) deceased, who is personally known to me to be the person whose name as such is subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor executed the same for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and seal, at my office in said county, this day of A.D. 19

(*Signature.*) (*Seal.*)

(160.)

Deed of Referee on Foreclosure, in use in the Middle States.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name and residence of the referee and grantor*), a referee duly appointed as hereinafter mentioned, of the first part, and (*name, residence, and occupation of the grantee*) of the second part.

Whereas at a Term of the (*name of the court*) court, on the day of one thousand eight hundred and it was among other things ordered and adjudged by the said court, in a certain action then pending in the said court, between (*names of plaintiff and defendant in the action*).

That all and singular the mortgaged premises mentioned in the complaint in said action, and in said judgment described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal, interest, and costs in said action, and which might be sold separately, without material injury to the parties interested, be sold at public auction, according to the course and practice of said court, by or under the direction of the said party of the first part as referee thereby, duly appointed for that purpose; that the said sale be made (*here state the directions in the order of court as to the place and time of the sale*) that the said referee give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said referee execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same.

And Whereas, the said referee, in pursuance of the said judgment of the said court, did on the day of one thousand eight hundred and sell at public auction at (*the place of sale*) the premises in the said judgment mentioned, due notice of the time and place of such sale being first given, agreeably to the said judgment; at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of dollars, that being the highest sum bidden for the same. Now this indenture witnesseth, that the said referee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the judgment of said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, the premises aforesaid, situate, bounded, and described as follows (*describe here the premises sold as directed in Form* 107).

To Have and to Hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to and for his and their only proper use, benefit, and behoof.

In Witness Whereof, The said referee as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF ,
COUNTY. } SS.

On the day of one thousand eight hundred and before me came known to me to be the individual described in, and who executed the above conveyance, and acknowledged that he executed the same.

(*Signature.*)

(161.)

Deed of Collector of Taxes.

To all Persons to whom these Presents shall come, I, (*name of collector*) of in the County of and State of collector of taxes for said town of duly chosen and qualified at the last annual meeting of the inhabitants of said town, held on the day of last past sends greeting:

Whereas, the assessors of said town of (*name of the town*) in their list of assessments committed to me, the said (*name of the collector*) to collect, have assessed (*name of the party for whose taxes the land is sold*) a resident owner of a certain tract of land situated in said bounded and described as follows, viz. (*describe the premises as directed in Form* 107) the sum of (*amount of tax*) and $\frac{}{100}$ dollars, as a tax on said premises for the year eighteen hundred and

And Whereas I, the said (*name of collector*) have demanded payment of said tax of (*name of party taxed*) more than fourteen days before proceeding to advertise and sell as hereinafter set forth.

And Whereas, the said (*name of the party taxed*) has given no written authority to any inhabitant of said town, as his attorney to pay the tax imposed on said land, and no mortgagee of said land has given written notice to the clerk of said town, that he the said mortgagee holds a mortgage thereon, nor given written authority to any inhabitant of said town as his attorney, to pay said tax.

And Whereas, I, the said having given public notice of the time and place of sale of the said land, for the non-payment of said tax, by an advertisement thereof three weeks successively, in the newspaper called the printed and published in in said county, the last publication of said advertisement being one week before the time of said sale: also by posting a like notice on said land three weeks before the time of said sale; and also by posting a like notice (*here state whatever other places the notice was posted at*) being two public places in said town, three weeks before the time of said sale, which notices severally contained the name of the said (*name of the party taxed*) and the amount of the tax assessed on said land; also a substantially accurate description of said land, did, on the day of instant, pursuant to the authority and notice aforesaid, no person appearing to pay said tax, and it being the opinion of me, that the said land could not be conveniently divided and a part thereof set off without injury to the residue, and judging it to be most for the public interest to sell the whole of said land, sell, at public auction, the said land above described, to (*name of purchaser and grantee*) for the sum of and $\frac{}{100}$ dollars, he being the highest bidder therefor.

Now Therefore Know Ye, that I, the said (*name of the collector*) by virtue of the authority in me vested as aforesaid, and in consideration of the aforesaid sum of and $\frac{}{100}$ dollars, to me paid by the said (*name *of the purchaser*) the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said all that said tract or parcel of land above mentioned and described, with the appurtenances thereto belonging.

To Have and to Hold the same to him, the said grantee, his heirs and assigns, to his and their use and behoof forever; subject, nevertheless, to the right of redemption, according to law.

And I, the said grantor, do covenant with the said grantee, his heirs and assigns, that in making the said sale as above set forth, I have complied with, observed, and obeyed all the provisions of law for the sale of real estate for the non-payment of taxes.

In Witness Whereof, I, the said collector, have hereto set my hand and seal, this day of in the year nineteen hundred and

(*Signature.*) (*Seal.*)

Executed and delivered in presence of

STATE OF ,
COUNTY. } SS.
A.D. 19

Then personally appeared the above-named collector, and acknowledged the above instrument to be his free act and deed.

Before me, *Justice of the Peace.*

(162.)

Deed of Assignee, in use in the Western States.

This Indenture, Made this day of in the year of our Lord one thousand eight hundred and (A.D. 19) between (*name, residence, and occupation of the assignee who is the grantor*) as assignee of (*name, residence, and occupation of assignor*) of the one part, and (*name, residence, and occupation of the purchaser who is grantee*) of the other part:

Whereas, The said (*name of the assignor*) being lawfully seized in his demesne, as of fee, among other things, of and in a certain lot, piece, or parcel of ground, situate in the County of and State of known and described as follows, to wit (*here describe the premises as in Form* 107). And being so thereof seized, did, on or about the day of A.D. one thousand eight hundred and (A.D. 19), enter into a written contract with the said party of the second part for the sale of the above-described premises for the sum of dollars.

And Whereas, The said (*name of the assignor*) did, by his certain deed of assignment, bearing date the day of A.D. 19 , grant, bargain, sell, aliene, remise, release, convey, assign, transfer, and set over (with other property) the above-described lot, piece, or parcel of ground unto the said party of the first part, his successors.

executors, administrators, and assigns forever, in trust nevertheless, to and for the uses and intent and purposes in said deed of assignment mentioned and set forth, reference thereto being had may fully and at large appear; which said deed of assignment is recorded in Book page of deeds, in the office of (the clerk of the Circuit Court of said county, and ex-officio recorder of deeds).

And Whereas, The said assignor did not comply with the said contract before the execution and delivery of the said deed of assignment to the said party of the first part.

Now this Indenture Witnesseth, That the said (*name of the assignee and grantor*) assignee of said (*name of the assignor*) for and in consideration of the sum of dollars (being the balance of the purchase money and interest due on said contract), unto him in hand paid by the said party of the second part, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by these presents, does grant, bargain, sell, aliene, release, and confirm unto the said party of the second part, and his heirs and assigns, all the above mentioned and described lot, piece, or parcel of ground, together with all and singular the rights, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, property, claim, and demand whatever, that he the said assignor had and held at and immediately before the execution and delivery of the said deed of assignment to said party of the first part, and also all the right, title, interest, property, claim, and demand whatever, that the said party of the first part acquired in, under or by virtue of the said deed of assignment by said assignor, to him, the said party of the first part. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, either in law or equity, that said assignor had and held at the time of and immediately preceding the execution and delivery of said deed of assignment to the said party of the first part, and all the right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(*Signature of Assignee.*) (*Seal.*)

STATE OF
COUNTY. } SS.

I, a in and for said county, in the State aforesaid, do hereby certify that who is personally known to me as the real person whose name is subscribed to the within deed, appeared before me this day, in person, and acknowledged that he executed and delivered the said deed, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

(163.)

Acknowledgment of Grantor and Wife identified, before Commissioner for another State.

STATE OF
} SS.
COUNTY OF

Be it Remembered, That on the day of one thousand nine hundred and before me, commissioner for the State of (*name of the State of which he is commissioner*) resident in the of , duly appointed, commissioned, and sworn to take acknowledgments and proof of deeds and other writings in the State of , to be used or recorded in the said State of (*name of the State of which he is commissioner*) and to administer oaths and affirmations, and to take depositions in said State of , to be used within the said State of appeared (*name of grantor*) and (*name of wife of grantor*) his wife, who are satisfactorily proven to me to be the individuals described in, and who executed the within deed, from said (*name of grantor*) and wife to (*name of grantee*) by the oath of (*witnesses to their identity*) who being by me duly cautioned and sworn, deposed that he knew them, the individuals, then present, to be the persons described in, and who executed the within deed. The said and his wife, then and there acknowledged to me that they executed the said deed for the purposes therein mentioned; and the said (*name of the wife*) being examined by me privily, and apart from her said husband, and the contents and effect of the said deed being by me first duly explained to her, did then and there acknowledge that she executed the same for the purposes therein mentioned, freely and without compulsion of or from her said husband.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office, on the day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Dominion of Canada.

The two Canadas were separated as to civil rights in 1791, and the French laws were allowed to remain in force in Lower Canada, while the civil laws of England were declared to be in force in Upper Canada. Now, both of these provinces, and with them nearly all the other British provinces in North America, are consolidated into the Dominion of Canada. But the same distinction of law continues to a considerable extent. In the Province of Quebec, formerly Lower Canada, the principles, forms, and usages of the French law prevail largely; while, in the other provinces, the common law of England prevails, as in the United States generally, and the forms and usages are substantially similar in all of them.

We give selected forms of deeds of grant and sale, mortgages, and leases, from different provinces, which we believe will suffice for practice generally throughout the Dominion. There are certain provisions, which, though not universal, are prevalent, and would always be safe and prudent. Deeds conveying land are now almost universally registered, and there should be a subscribing witness, who declares in an affidavit his name, residence, and occupation, and makes oath: 1. To the execution of the original, and of the duplicate, if there be one. 2. To the place and date of execution. 3. That he knew the parties to the instrument, or one or more of them, as the case may be. If the deed be made in Quebec, it should be executed before a judge, or prothonotary, or the clerk of the Circuit Court, or a commissioner empowered to take affidavits, or a notary public.

(164.)

Deed of Land in use in the Province of Ontario.

This Indenture, Made (*in duplicate*) the day of one thousand nine hundred and in pursuance of the Act respecting short forms of conveyances, between (*here insert the name, occupation, and residence of the grantor or grantors*) of the first part, and (*here insert the name, occupation, and residence of the grantee or grantees*) of the second part,

Witnesseth, That in consideration of (*here insert the price paid*) of lawful money of Canada, now paid by the said part of the second part to the said part of the first part (the receipt whereof is hereby by acknowledged), the said part of the first part do grant unto the said part of part, heirs and assigns forever, all and singular th certain parcel or tract of land and premises situate, lying and being (*here insert a description of the premises sold, substantially the same as in Form* 107).

To Have and to Hold unto the said part of the part, heirs and assigns, to and for their sole and only use forever: subject, nevertheless, to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the Crown. And the said part of the first part release to the said part of the part all claims upon the said lands.

In Witness Whereof, The said parties hereto have hereunto set their hands and seals.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

COUNTY OF *to wit:*

I, make oath and say: 1. That I was personally present and did see the within instrument and duplicate duly signed, sealed, and executed by the part thereto. 2. That the said instrument and duplicate were executed at the . 3. That I, know the said part . 4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at the of in the County of this day of in the year of our Lord 18 .

A Commissioner for taking affidavits in B. R., &c.

(165.)

Deed of Land with Mortgage Back to secure the Price, in use in the Province of Quebec.

On This Day, the of in the year of our Lord one thousand nine hundred and before the undersigned public notar , duly commissioned and sworn, in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said Province, personally appeared (*name, residence, and occupation of the grantor or grantors*) who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over, and by these presents do bargain, sell, assign, transfer, and make over, from henceforth and forever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, to (*name, residence, and occupation of the grantee or grantees*) part to these presents, and accepting thereof, for heirs and assigns, (*the description of the premises conveyed substantially as in Form* 107,) with all and every the members and appurtenances thereunto belonging, of all which the said purchaser declare to have a perfect knowledge, as having seen and viewed the same, and therewith content and satisfied. Which said vendor lawfully seized thereof, by virtue of a good and sufficient title, the same having been acquired (*here give a brief but accurate account or abstract of the title*). The aforesaid hereby bargained and sold, lot , piece , or parcel of land and premises.

To Have, Hold, Use, and Enjoy the aforesaid bargained and sold and premises, with their rights, members, and appurtenances, unto the said heirs and assigns, as their own proper freehold forever, by virtue of these presents, to enter upon and take possession of the aforesaid and premises . The present bargain and sale is made in manner as aforesaid, for and in consideration of the sum of

And for Security of the due and faithful payment of the said balance of consideration money and interest, the hereby bargained and sold lot of and premises, are, by these presents, specially, and by privilege of *bailleur de fonds*, mortgaged and hypothecated.

And, as further security, the said purchaser do hereby bind and oblige immediately to insure and to keep constantly insured at own cost and expense against loss by fire, with such insurance company or companies as the said vendor or representatives may approve of, for a sum of money equal to the amount of the present obligation, the house and other buildings erected on the above-described piece and parcel of land, and to transfer to the said vendor and representatives the policy or policies of such insurance and insurances, together with the sum of money thereby insured, the whole as long as any part or portion of the said amount in principal or interest may remain unpaid. Failing which, the said vendor heirs and assigns, shall have the right to do so, and the said purchaser heirs and representatives, shall be bound to repay on demand to the said vendor heirs and assigns, all such sum and sums of money which he or they may have expended in so doing; and for security thereof the said premises are hereby further hypothecated to the extent of

And in consideration of the premises, the said vendor do hereby transfer and set over to the said purchaser all right of property, claim, title, interest, demand, seizin, possession, and other rights whatsoever, which the said vendor can have, demand, or pretend in or upon the aforesaid hereby bargained and sold lot , piece , or parcel of land and premises of which hereby divest in favor of the said purchaser heirs and assigns consenting and agreeing, that the said purchaser be, and remain seized and invested with the full and entire possession thereof, and for that purpose, do hereby constitute the bearer of these presents Attorney, to whom give all necessary power and authority to that effect,—*For thus, &c.*

And at the making and passing of these presents also personally appeared and intervened Dame wife of the said by her said husband duly and specially authorized for all and every the effects and purposes hereof; who, after having had and taken communication of the foregoing deed of sale, declared to have renounced, as by these presents, she doth, as well in her own name and behalf, as for and in the name and on behalf of her child or children born or to be born, issue of her marriage with the said renounce to all dower and all right and title of dower, *soit coutumier ou préfix* which she, the said might or of right ought to have or claim in or upon the above-described and hereby bargained and sold lot, piece, or parcel of land and premises, of which she hereby divests herself and her said children, declaring the said property and every part thereof, hereby freed, cleared, and discharged of and from all her said rights of dower, and all other her matrimonial rights and claims, whether legal, stipulated, or customary.

And for the execution of these presents, and of every the premises, the said parties have elected their domicil at the place above mentioned. *Where, etc.—Notwithstanding, etc.—Promising, etc.—Obliging, etc.—Renouncing, etc.*

Done and Passed at the said city of Montreal, in the office of the said Notary, on the day, month, and year first before written, in the noon, and signed by the said with, and in the presence of said Notary, also hereunto subscribing, these presents having been first duly read and executed under the number thousand hundred and

(166.)

Deed of Land with Covenants and Release of Dower, in use in the Province of Ontario.

This Indenture, Made (*in duplicate*) the day of in the year of our Lord one thousand nine hundred and in pursuance of the Act respecting short forms of conveyances, between (*here insert the name, residence, and occupation of the grantor or grantors*) of the first part (*here insert the name of the wife of the grantor*), wi of the said part of the first part; of the second part; and (*here insert the name, residence, and occupation of the grantee or grantees*) of the third part.

Witnesseth, That in consideration of of lawful money of Canada, now paid by the said part of the third part, to the said part of the first part (the receipt whereof is hereby by acknowledged), he the said part of the first part, do grant unto the said part of the third part, heirs and assigns forever, all and singular th certain parcel or tract of land and premises situate, lying, and being (*here insert the description of the premises conveyed, substantially as in Form* 107).

To Have and to Hold unto the said part of the third part, heirs and assigns, to and for and their sole and only use forever; subject, nevertheless, to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the Crown.

The said part of the first part covenant with the said part of the third part that he ha the right to convey the said lands to the said part of the third part, notwithstanding any act of the said part of the first part.

And that the said part of the third part shall have quiet possession of the said lands, free from all incumbrances.

And the said part of the first part covenant with the said part of the third part, that will execute such further assurances of the said lands as may be requisite.

And the said part of the first part covenant with the said part of the third part, that he ha done no act to encumber the said lands.

And the said part of the first part release to the said part of the third part all claims upon the said lands.

And the said part of the second part, wi of the said part of the first part, hereby bar dower in the said lands.

In Witness Whereof, The said parties hereto have hereunto set their hands and seals.

Signed, Sealed, and Delivered in the Presence of

Received, on the day of the date of this Indenture, from the said part of the third part, the sum of being the full consideration therein mentioned.

(*Witness.*)

COUNTY OF *to wit:*

I, of the in the County of make oath and say: 1. That I was personally present and did see the within instrument and duplicate thereof duly signed, sealed, and executed by the part thereto. 2. That the said instrument and duplicate were executed at the 3. That I, know the said part . 4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at in the County of
this day of in the year of our Lord 19
A Commissioner for taking Affidavits in B. R., etc.

(167.)

Deed of Grant and Quitclaim, for General Use.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the grantor*) of the one part, and (*name, residence, and occupation of the grantee*) of the other part, witnesseth that for and in consideration of the sum of of lawful money of to the said in hand well and truly paid by the said at or immediately before the sealing and delivery of these presents (the receipt whereof the said do hereby acknowledge, and of and from the same, and every part thereof, do acquit, release, and discharge the said heirs, executors, administrators, and assigns forever by these presents) the said hath granted, released, and confirmed, and by these presents doth grant, release, and confirm to the said party of the first part. (*Here describe carefully the premises conveyed*).

Together with all and every the rights, privileges, easements, advantages, and appurtenances whatsoever, to the said hereditaments belonging, or in anywise appertaining, or thereunto now or heretofore holden, used, occupied, or enjoyed.

To Have and to Hold the said messuages and tenements, land and hereditaments, and all and singular other the premises hereinbefore granted, appointed, and released, or expressed and intended so to be, with their appurtenances, unto and to the use of the said heirs and assigns forever. Subject, nevertheless, to the quit-rents to become due, exceptions, reservations, covenants, and conditions in the original grants or letters-patent of the said premises reserved and contained.

And the said do hereby for heirs, executors, and administrators, covenant, promise, and agree with and to the said heirs and assigns, in manner and form following; that is to say, that it shall and may be lawful to and for the said heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter into and upon, and to have, hold, occupy, possess, and enjoy the said messuages, lands, and other heraditaments hereinbefore granted and released, or expressed and intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their proper use and benefit, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by the said heirs or assigns, or of or by any other person, lawfully or equitably claiming or to claim, by, from, or under, or in trust for him, them, or any of them.

In Witness Whereof, I, the said (*name of the grantor*), have hereunto subscribed my name and affixed my seal, at on the day of in the year of our Lord

(*Name of Grantor.*) (*Seal.*)

Executed and Delivered in Presence of
(*Names of witnesses.*)

$

Received, on the day of the date of the within written Indenture, of and from within named, the sum of of lawful current money of being the full consideration money within mentioned, to be paid by to

Witness.

This Deed was acknowledged before me by therein named apart from her husband, to have been voluntarily executed by her, and that she was aware of the nature of the contents thereof.

Dated this day of A.D. 19

J. P. for *County.*

(168.)

Deed of Grant of Sale of Land, in use in Prince Edward Island.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the grantor*) of the one part, and (*name, residence, and occupation of the grantee*) of the other part,

Witnesseth, That for and in consideration of the sum of of lawful money of Prince Edward Island, to the said in hand well and truly paid by the said at or immediately before the sealing and delivery of these presents (the receipt whereof he the said doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said heirs, executors, administrators, and assigns, and every of them, forever, by these presents) he the said hath granted, bargained, sold, aliened, released, and confirmed, and by these presents, doth grant, bargain, sell, aliene, release, and confirm (and the said (*name of the wife of the grantor*) doth hereby release all her right of dower) unto the said heirs and assigns, all that tract, piece, or parcel of land, situate, lying, and being (*describe carefully the premises sold and conveyed*).

Together with all woods, underwoods, ways, waters, watercourses, houses, outhouses, yards, buildings, stables, gardens, fences, profits, commodities, privileges, easements, and advantages whatsoever, to the said lands, hereditaments, and premises belonging, or in anywise appertaining, or therewith usually held, used, occupied, possessed, enjoyed, reputed, taken, or known as part, parcel, or member thereof, or of any part thereof; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part thereof; and all the estate, right, title, trust, interest, property, claim, and demand whatsoever, both at law and in equity, of the said of, in, to, or out of the said lands, hereditaments, and premises, or any part thereof:

To Have and to Hold the said lands, hereditaments, and premises hereby granted and released, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said heirs and assigns, to the use of the said heirs and assigns forever; subject, nevertheless, to all taxes, assessments, and other public burdens now imposed or hereafter to be imposed on the said premises mentioned to be hereby granted, or any part or parcel thereof. And the said heirs, executors, and administrators, covenant, promise, and agree to and with the said heirs and assigns, by these presents, in manner following; that is to say, that the said at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seized of and in, or well and sufficiently entitled unto, the said land, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances to the same belonging, of or for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee-simple in possession, without any manner of condition, use, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, charge, abridge, defeat, encumber, revoke, or make void the same: and that he the said how ha in good right, full power, and lawful and absolute authority to grant, release, and convey all and singular the said lands, hereditaments, and premises, with the appurtenances, to the use of the said heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents: and also, that the said lands, hereditaments, and premises hereby granted and released, or intended so to be, and every of them, and every part thereof, with the appurtenances to the same belonging, shall and lawfully may from time to time, and at all times hereafter, remain, continue, and be to the use of the said heirs and assigns, and shall and may accordingly be peaceably and quietly held and enjoyed by the said heirs and assigns, without any lawful let, suit, trouble, molestation, or interruption whatsoever, of, from, or by the said heirs or assigns, or any other persons whomsoever lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him or them, or any of their ancestors; and that freely, clearly, and absolutely saved, defended, kept harmless, and indemnified by the said heirs, executors, or administrators, of, from, and against all former and other estates, rights, titles, liens, charges, and encumbrances whatsoever, had, made, done, committed, executed, or suffered by the said or any of their ancestors, or any other person or persons whomsoever lawfully or equitably claiming, or to claim by, from, or under, or in trust for him, them, or any of them, or by or through his, their, or any of their wilful means or default, consent, privity, or procurement; and, further, that the said heirs, and all and every other person or persons whomsoever having or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, trust, or interest whatsoever, at law or in equity, of, in, to, or out of the said lands, hereditaments, and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for or any of ancestors, shall and will from time to time, and at all times hereafter, upon the request and the cost and charges of the said heirs or assigns, make, do, perform, acknowledge, suffer, and execute, or cause and procure to be made, done, performed, acknowledged, suffered, and executed, all and every such further and other lawful and reasonable act and acts, thing and things, devises, conveyances, and assurances in the law whatsoever, for the further, better, more perfect, and absolute settling, conveying, and assuring of all and singular the said lands, hereditaments, and premises hereby granted and released, with their appurtenances, to the use of the said heirs and assigns, as by the said heirs or assigns, or his, their, or any of their counsel learned in the law, shall be reasonably devised, advised, or required.

And the parties aforesaid have hereunto set their hands and seals, at on the day of in the year of our Lord

(Name of grantor.) *(Seal.)*
(Name of grantee.) *(Seal.)*

Executed and Delivered in Presence of
(Name of witnesses.)

$

Received, on the day of the date of the within written Indenture, of and from within named, the sum of of lawful current money of being the full consideration money within mentioned to be paid by to

Witness.

This Deed was acknowledged before me by therein named apart from her husband, to have been voluntarily executed by her, and that she was aware of the nature of the contents thereof.

Dated this day of A.D. 19

J. P. for *County.*

ABSTRACT OF THE LAWS OF ALL THE STATES AND TERRITORIES RELATING TO DEEDS AND THEIR REQUIREMENTS.

ALABAMA.—Every deed must be in writing or printed, and on parchment or paper, signed at the foot and attested by a witness, acknowledged, and recorded. If they purport on their face to be sealed instruments, they have such force.

ARIZONA.—Deed must be in writing, signed and acknowledged, and recorded.

ARKANSAS.—Deeds are construed to pass the whole estate of the grantor in the property conveyed, unless specially limited. They must be acknowledged or proved by subscribing witness. If duly acknowledged no witnesses are necessary. Private seals are abolished.

CALIFORNIA.—Deeds are known as "grants." They pass the whole title in fee simple, unless an express reservation is made, and must be acknowledged or proved, and recorded in the office of the recorder for the county where the land is situated. Seals and witnesses are not required. The Torrens system of registration and certification of land titles has been adopted.

COLORADO. — The whole estate conveyed passes, unless there is an express limitation. The deed must be acknowledged, and recorded in the county where the land is situated. No witnesses are required. Seals are abolished.

CONNECTICUT. — The deed must be in writing, signed, sealed, and acknowledged by the grantor, attested by two witnesses, and it must be recorded in the clerk's office of the town where the lands lie. A scroll answers for a seal.

DELAWARE. — A deed must be acknowledged, and recorded in the office for the county where the land lies within three months. Only one witness is necessary, and a scroll answers for a seal.

DISTRICT OF COLUMBIA. — Deeds are usually witnessed, although not required by statute to be so. They must be acknowledged and recorded. Notice dates from time of receipt for record. A scroll answers for a seal.

FLORIDA. —Deeds must be in writing, sealed and delivered in presence of at least two witnesses; must be acknowledged before a proper officer, and recorded in the county where the land is situated, within six months after the execution of the same. Deeds destroyed by fire may be re-recorded under certain conditions. A scroll answers for a seal. Deed from husband to wife is valid.

GEORGIA. — A deed must be in writing, signed and sealed by the grantor, attested by at least two witnesses, acknowledged before the proper officer, and recorded in the clerk's office of the Superior Court for the county where the land lies. Mortgages must be recorded within thirty days after date. A scroll answers for a seal.

IDAHO. — Deeds pass all the estate of the grantor without using the word "heirs," unless a different intention is expressed. They must be in writing, acknowledged, and recorded. No witness is required. A scroll answers for a seal.

ILLINOIS. —Deeds convey the whole interest, unless there be a limitation; must be acknowledged and recorded in the county where the land is situated. No witnesses are required, and a scroll answers for a seal.

INDIANA. — The word "heirs" is not necessary in deeds, and seals and scrolls are abolished. The deed must be in writing, signed and acknowledged, and recorded in the county where the lands are, within forty-five days after date. Witnesses are not necessary.

IOWA. — Every deed passes the grantor's whole interest, unless a contrary intent appears. Seals are not necessary, neither are witnesses. Deeds must be acknowledged before a judge or clerk of a court having a seal, a notary public, county auditor, or justice of the peace, and recorded in the county where the lands lie.

KANSAS.—Deeds must be in writing, subscribed by the grantor, or his agent or attorney, acknowledged and recorded in the county where the land is. Private seals, except of corporations, are abolished. Witnesses are not required.

KENTUCKY.—The deed must be in writing, and should be acknowledged, and recorded in the office of the clerk of the court for the county where the land is; if not acknowledged, it may be proved by two subscribing witnesses. Seals are abolished,

LOUISIANA.—Deeds should be acknowledged and attested by the person taking the acknowledgment and two male witnesses, and should be recorded in the parish where the property is. No seal or scroll is necessary.

MAINE.—Deeds must be in writing, signed and sealed, acknowledged by the grantor, or if there be more than one grantor then by one of them, and recorded in the county where the land is. No witnesses are required.

MARYLAND.—All deeds must be signed and sealed. They require at least one witness, and must be acknowledged and recorded within six months in the county where the lands lie. A scroll answers for a seal.

MASSACHUSETTS.—Conveyances are made in writing, signed and sealed by the grantor or his attorney and acknowledged by the grantor, or if there be more than one grantor then by one of them and recorded in the county where the lands lie. No witnesses are necessary. A scroll is not sufficient.

MICHIGAN.—Deeds must be signed and sealed, and witnessed by at least two persons, and acknowledged and recorded in the county where the property is. A scroll answers for a seal.

MINNESOTA.— Two witnesses are necessary to every deed. It must be acknowledged and recorded in the county where the land is. Private seals are abolished.

MISSISSIPPI.— Deeds must be acknowledged, or proved by one or more of the subscribing witnesses, and recorded in the office of the clerk of the Chancery Court for the county where the lands are. If the deed is not acknowledged, two witnesses are necessary. A seal is not required. Actual possession and occupancy by the grantee of property conveyed is equivalent to record.

MISSOURI.— Witnesses are not necessary. The deed should be signed, acknowledged, and recorded in the county where the land is. It need not be under seal unless executed by a corporation.

MONTANA.—Deeds must be in writing, signed by the grantor, and acknowledged or proved by subscribing witness, and recorded. Private seals are abolished.

NEBRASKA.—The deed must be signed in the presence of at least one witness, who must also subscribe as such, and acknowledged or proved, and recorded in the county where the land is. Seals are abolished.

NEVADA.—Deeds must be signed, acknowledged, and recorded in the county where the land is. Witnesses are unnecessary, and a scroll answers for a seal.

NEW HAMPSHIRE. — Deeds must be signed, sealed, acknowledged, attested by two or more witnesses, and recorded in the county where the land is. A scroll is not sufficient.

NEW JERSEY. — Deeds must be signed, sealed, acknowledged, and recorded in the county where the land is. A scroll is sufficient and witnesses are not necessary, though one is usually taken.

NEW MEXICO. —Deeds must be signed by the grantor, acknowledged, and recorded.

NEW YORK. — Every deed must be subscribed and sealed. A scroll is sufficient — and if not duly acknowledged previous to its delivery, must be attested by at least one witness. It must be acknowledged before the proper officer, and recorded in the county where the land is.

NORTH CAROLINA. — A scroll answers for a seal. Deeds must be acknowledged or proved by one or more witnesses, and recorded in the county where the land is.

NORTH DAKOTA. — Deeds must be signed by the grantor, acknowledged and recorded. Witnesses and seals are unnecessary.

OHIO. —Deeds must be in writing, signed, acknowledged in the presence of two attesting witnesses before the proper officer, and recorded in the county where the land is. No seal is necessary.

OKLAHOMA TERRITORY. — Deeds must be signed by the grantors, acknowledged, and recorded. Witnesses and seals are unnecessary.

OREGON. — Deeds must be signed and sealed (a scroll is sufficient), acknowledged, and recorded within five days in the county where the land is. Two witnesses are necessary.

PENNSYLVANIA. — The deed must be signed, sealed and acknowledged, and recorded in the county where the property is within ninety days, except in Philadelphia where recording must be done at once. Deeds executed out of the State must be recorded within six months. One or more witnesses are usually taken, but are not required. A scroll answers for a seal.

RHODE ISLAND. —The deed must be in writing, signed, sealed, and delivered, acknowledged and recorded in the office of the clerk or recorder of deeds of the town or city where the property is. Witnesses are not essential. Private seals are abolished.

SOUTH CAROLINA. —The deed must be in writing, signed, sealed, and acknowledged, and recorded in the county where the land is. Two witnesses are necessary. If recorded within forty days from date, it is notice from its date, otherwise only from the date of record.

SOUTH DAKOTA. — Deeds must be signed by the grantor, acknowledged and recorded. Witnesses and seals are unnecessary.

TENNESSEE. — Deeds must be acknowledged by the grantor, or proved by two witnesses, and registered in the county where the land lies. If acknowledged by grantor no witness is necessary. Seals are abolished.

TEXAS.—The deed must be signed and acknowledged, or proved by two witnesses, and recorded in the office of the clerk of the county court where the land lies. Seals are not necessary.

UTAH.—Deeds must be signed by the grantor in the presence of one or more witnesses, acknowledged, or proved and recorded. A seal is unnecessary.

VERMONT.—Deeds must be signed and sealed (and a scroll is not sufficient) in the presence of two witnesses, acknowledged, and recorded in the clerk's office of the town or city where the property is.

VIRGINIA.—A deed must be signed and sealed by the grantor, acknowledged or proved by two witnesses, and recorded within sixty days in the office of the county clerk of the county where the land lies. A scroll is sufficient.

WASHINGTON.—The deed must be in writing, signed by the grantor, acknowledged, and recorded. The use of private seals is abolished.

WEST VIRGINIA.—Deeds must be executed under seal or scroll, acknowledged or proved by two witnesses, and recorded in the county where the land is. Witnesses are not required when deed is acknowledged.

WISCONSIN.—Deeds must be signed and sealed in presence of two witnesses, acknowledged, and recorded in the county where the lands are. A scroll answers for a seal.

WYOMING.—Deeds must be signed and sealed by the grantor in the presence of one witness, acknowledged, and recorded. A scroll answers for a seal.

CHAPTER XXX.

MORTGAGES OF LAND.

THE purpose of a mortgage is to give to a creditor the security of property. It is very similar to a pledge, although not the same thing.

Mortgages are now made of personal property, as well as of real property; but we will consider in this chapter a mortgage of real property; or, as it is usually called, a mortgage deed.

This is a deed conveying the land to the creditor as fully, and in precisely the same way, as if it were sold to him outright; but with an addition. This consists of a clause inserted before the clause of execution, to the effect that if the grantor (the mortgagor) shall pay to the grantee (the mortgagee) a certain amount of money at a certain time, then the deed shall be void. It is usually expressed in words substantially like these:

"Provided, nevertheless, that if the said A B (the grantor), his heirs, executors, or administrators, shall pay to the said C D (the grantee), his executors, administrators, or assigns, the sum of $ ——— with interest (semi-annually, or otherwise as agreed on), on or before the —— day of ——, then this deed, and also a certain promissory note signed by said A B, whereby said A B promised to pay said C D, or his order, the said sum at the said time, shall both be void; and otherwise shall remain in full force."

In some states it is more frequent to make a bond, instead of a note, to be secured by the mortgage; and the proviso should be altered accordingly; and it should also be made to express any other terms agreed on. Some of these will be spoken of presently.

In law, everything is a mortgage which consists of a valid conveyance, and a promise, or agreement, which may be on the same or on a different piece of paper or instrument, providing that the conveyance shall be void when a certain debt is paid, or the act performed for which the mortgage is security.

The mortgagee has now a title to the land; but it is subject to avoidance by payment of the debt. Until such payment, the land is his; and all the mortgagor owns in relation to it is a right to pay the debt and redeem the land. Hence, a mortgagee has instantly as good a right to take possession of the land (unless, as is now common, the deed provides that the mortgagor may retain possession) as if he were an outright purchaser.

Formerly, a mortgagor had a right to redeem his land only before or when the debt became due; for if he did not pay the money when it was due, he had no further right. But courts of equity, deeming this too hard, allowed him a further time to redeem it. And courts of law adopted the same rule, which is also contained in the statutes of all our States. This right to redeem is called a right in equity to redeem, or, more briefly and commonly, an equity of redemption; which all courts now regard and protect. The mortgagor may sell this equity of redemption, or he may mortgage it by making a second or other subsequent mortgage of the land, and it may be attached by creditors, and would go to assignees as a part of his property if he became insolvent. The time within which a mortgagor may thus redeem his land is usually three years.

The law regards this equity as so important that it will not permit a party to lose it by his own agreement. Thus, if a mortgagor agrees with the mortgagee, in the most positive terms, or in any way he can contrive, or for any consideration, that he will have no equity of redemption, and that the mortgagee may have possession and absolute title as soon as the debt is due and unpaid, the law sets aside all such agreements, and gives the debtor his equity of redemption for three years.

Within a few years, however, a way has been found to effect this purpose indirectly, which the law sanctions. Many persons object to lending their money on mortgage, because they will have to wait three years after the debt is due before the land can be certainly theirs. But it is now quite common for the mortgage deed to contain an agreement of the parties, that, if the money is not paid when it is due, the mortgagee may, in a certain number of days thereafter, sell the land (providing also such precautions to secure a fair price as may be agreed on), and, reserving enough to pay his debt and charges, pay over the balance to the mortgagor. This is called a power of sale mortgage.

The three years of redemption do not begin from the day when the debt is due and unpaid, unless the mortgagee then enters and takes possession for the purpose of *foreclosing* the mortgage, as the legal phrase is; by which phrase is meant extinguishing the equity of redemption. If the debt has been due a dozen years, the mortgagor may still redeem, unless the mortgagee has entered *to foreclose*, and three years have elapsed afterwards.

He may make entry for this purpose in a peaceable manner, before witnesses, as pointed out in the statutes regulating mortgages, or by an action at law.

If the mortgagor redeems, he must tender the debt, with interest, and the lawful costs and charges of the mortgagee; but he will be allowed such rents and profits as the mortgagee has actually received, or would have received but for his own fault.

It is commonly thought that the mortgagor has a right to retain possession until the debt is due and unpaid, and in fact he usually does so. But we have seen that the mortgagee has just as much right of immediate possession as a buyer; and therefore, if it is not intended that he should have possession at once, the mortgage deed ought to contain a clause to the effect that the mortgagor may retain possession as long as he pays instalments and interest as due, and complies with his other agreements.

One of these other agreements, which is now very common, is that the mortgagor shall keep the premises insured in a certain sum for the security of the mortgagee; and, if there be such an agreement, it should be expressed in the deed. Otherwise, if the mortgagee insures the house, he cannot charge the premium to the mortgagor.

If a mortgagor erects buildings on the mortgaged land, or puts fixtures there, and the mortgagee takes possession of the land, and *forecloses* the mortgage, he gets all these additions. If the mortgagee puts them on the land, and the mortgagor redeems, he gets the benefit of them all, without paying the mortgagee for them. Such is the effect of the law if there be no bargain between the parties about these things. But they may make any bargain about them they choose to make.

In the Forms appended to this chapter are many Forms of release and discharge of mortgages. In some states it is common to release a mortgage by a quitclaim deed from the holder of the mortgage to the holder of the land or of the equity or right of redemption. And not unfrequently it is done by an acknowledgment of satisfaction, release, or discharge drawn by the Register or Recorder of Deeds on the margin of the record of the mortgage, and duly signed by the mortgagee or holder of the mortgage. Any instrument will have the effect of discharging and annulling a mortgage, which declares with sufficient definiteness that the debt, obligation, or covenant, which that mortgage was intended to secure, is paid, satisfied, or performed; the instrument being duly signed, sealed, and acknowledged, and placed on record. It takes effect like other deeds from the time it is placed in the Recorder's hands.

Whenever a mortgage is discharged in any way, the Recorder makes an entry to that effect on the margin of the record of the mortgage.

The remarks which were made at the close of the preceding chapter (just before the Forms) concerning the various Forms of deeds conveying land, apply with equal force to deeds of mortgage of land; and I refer to them now because they are equally necessary to the proper understanding and use of the following Forms.

(169.)

A Promissory Note, to be Secured by Mortgage.

18

for value received promise
to pay to dollars, at
with interest at the rate of per cent. per annum.

This note is secured by a deed of mortgage of even date herewith from
to

$ (*Signature.*)

(170.)

Bond, to be Secured by a Mortgage.

Know all Men by these Presents, That I (*name of obligor*) of in the County of and State of , am held, bound, and obliged unto (*name of obligee*) of in the County of and State of in the sum of (*penalty usually twice as much as the actual debt*) to be paid to the said (*the obligee*) his executors, administrators, heirs, or assigns, and to this payment I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, this day of in the year

The Condition of the above obligation is such, that if I the said (*name of the obligor*) or my heirs, executors, or administrators, shall pay or cause to be paid unto the said (*name of the obligee*) his heirs or assigns the sum of (*here insert the amount of the debt or sum to be secured*) on the day of in the year , with interest at per cent., payable six months from the date hereof, and every six months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect, and otherwise it shall remain in full force. And I further agree and covenant, that if any payment of interest be withheld, or delayed for days after such payment shall fall due, the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of days, at the option of said (*name of the obligee*) or his executors, administrators, or assigns.

(*Signature.*) (*Seal.*)

(*Witness.*)

(171.)

Mortgage without Power of Sale and without Warranty, but with Release of Homestead and of Dower.

This Indenture, made this day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of mortgagor*) and (*name of wife*) wife of said (*name of mortgagor*) parties of the first part, and (*name, residence, and occupation of mortgagee*) party of the second part.

Whereas, The said party of the first part is justly indebted to the said party of the second part, in the sum of secured to be paid by a certain promissory note (*or bond*) (*describe the note or bond*).

Now, Therefore, this Indenture Witnesseth, That the said parties of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said note (*or bond*) above mentioned, and also in consideration of the further sum of one dollar to us in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, all that (*here describe the premises as directed in Form* 107).

To Have and to Hold the Same, Together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, or in anywise appertaining. And also all the estate, interest, and claim whatsoever in law as well as in equity, which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part, and his heirs and assigns, and to their only proper use, benefit, and behoof. And the said parties of the first part hereby expressly waive, release, relinquish, and convey unto the said party of the second part and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

Provided Always, and these Presents are upon this Express Condition, That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay, or cause to be paid to the said party of the second part, or his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned note (*or bond*) according to the true intent and meaning thereof, then, in that case, these presents and everything herein expressed shall be absolutely null and void.

In Witness Whereof, The said parties of the first part hereunto set their hands and seals, the day and year first above written.

(Signature of mortgagor.) *(Seal.)*
(Signature of wife of mortgagor.) *(Seal.)*

Signed, Sealed, and Delivered in Presence of

STATE OF
COUNTY. } SS.

I, in and for the said county, in the State aforesaid, do hereby certify that (*name of mortgagor*) personally known to me as the same person whose name is subscribed to the foregoing mortgage, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of wife*) wife of the said (*name of mortgagor*) having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements herein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, voluntarily and freely, and without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this day of A.D. 18

(*Signature.*) (*Seal.*)

(172.)

Mortgage, with Power of Sale, to Secure a Bond, without Release of Dower.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of mortgagor*) party of the first part, and (*name, residence, and occupation of mortgagee*) party of the second part: Whereas, the said (*name of mortgagor*) is justly indebted to the said party of the second part in the sum of lawful money of the United States, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of (*here state the amount due on the bond, and the time and terms of payment*) as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, aliene, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said (*name of mortgagor*) for himself and his heirs, executors, and administrators, does covenant and agree, to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or any part thereof, that then, and from thenceforth, it shall be lawful for the said party of the second part, or his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction. And out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be), unto the said (*name of mortgagor*) party of the first part, or his heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

In Witness Whereof, The parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

(Signature of mortgagor.) *(Seal.)*
(Signature of mortgagee.) *(Seal.)*

Sealed and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

On the day of in the year one thousand eight hundred and before me personally came *(name of both parties)* who are known to me to be the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

(Signature.)

(173.)

Mortgage to secure a Debt, with Power of Sale.—Short Form.

This Indenture, Made the day of in the year one thousand nine hundred and between *(name, residence, and occupation of mortgagor)* party of the first part, and *(name, residence, and occupation of mortgagee)* party of the second part, witnesseth, that the said party of the first part, in consideration of the sum of *(the amount of the debt)* to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, and his heirs and assigns forever, all *(here describe the premises as directed in Form* 107) with the appurtenances, and all the estate, right, title, and interest of the said party of the first part therein.

This Grant is intended as a security for the payment of *(here describe the debt)* which payments, if duly made, will render this conveyance void. And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorized to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due, with the costs and expenses allowed by law.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature.) *(Seal.)*

Sealed and Delivered in the Presence of

STATE OF }
COUNTY OF } ss.

On the day of in the year one thousand nine hundred and before me personally came (*name of mortgagor*), who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same, as his free act and deed.

(*Signature.*)

(174.)

Mortgage to secure a Debt, fuller Form, with Power of Sale.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the mortgagor*) party of the first part, and (*name, residence, and occupation of the mortgagee*) party of the second part:

Whereas, the said party of the first part is justly indebted to the said party of the second part in (*here describe the amount and terms of the debt, or note, or bond*).

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the debt (*or note, or bond*) above described, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, aliene, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay to the said party of the second part, or his heirs, executors, administrators, or assigns, the above-described debt (*or note, or bond*) according to terms and tenor thereof, then this deed (*and also said debt,* *or note, or bond*) shall be wholly discharged and void: and otherwise shall remain in full force and effect. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns, therein, at public auction, according to the act in such case made and provided. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said debt (*or note, or bond*) together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, or his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, or his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under him, them, or either of them.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signature of mortgagor.*) (*Seal.*)
(*Signature of mortgagee.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

On the day of in the year one thousand nine hundred and before me personally came (*name of both parties*) who are known to me to be the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

(*Signature.*)

(175.)

Deed Poll of Mortgage, with Power to Sell, and Insurance Clause, and Release of Dower and Homestead.

Know all Men by these Presents, That I (*name, residence, and occupation of mortgagor*) in consideration of to me paid by (*name, residence, and occupation of mortgagee*) the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said (*name of mortgagee*) all that lot or parcel of land, with all the buildings thereon standing, situated in the town (*or city*) of County of State of and bounded and described as follows: that is to say (*here describe the premises as directed in Form* 107).

To Have and to Hold the afore-granted premises, with the privileges, easements, and appurtenances thereto belonging, to the said grantee, and to his heirs and assigns, to their use forever.

And I, the said grantor, for myself and my heirs, executors, and administrators, do covenant with the said grantee, and his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free from all incumbrances (*if any incumbrance exists, say* "*except as follows,*" *and describe the incumbrance,*) that I have good right to sell and convey the same to the said grantee, and his heirs and assigns as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said grantee, and his heirs and assigns forever, against the lawful claims of all persons.

Provided, Nevertheless, That if the said grantor, or his heirs, executors, or administrators, shall pay unto the said grantee, or his executors, administrators, or assigns, the sum of dollars$\frac{}{100}$ in days (*or months*) from the day of the date hereof, with interest on said sum at the rate of per centum per annum, payable (*semi-annually*) and until such payment keep the buildings standing on the land aforesaid insured against fire, in a sum not less than dollars, for the benefit of said mortgagee, and payable to him in case of loss, at some insurance office approved by said mortgagee; or in any default thereof, shall on demand pay to said mortgagee all such sums of money as the said mortgagee shall reasonably pay for such insurance, with interest, and also pay all taxes levied or assessed upon the said premises, then this deed, as also (*a certain bond or*) a certain promissory note, bearing even date with these presents, signed by the said mortgagor, whereby for value received he promises to pay the said mortgagee or his order, the said sum and interest, at the time aforesaid, shall both be absolutely void to all intents and purposes.

But if default shall be made in the payment of the money above mentioned, or the interest that may grow due thereon, or of any part thereof, then it shall be lawful for the said grantee, or his executors, administrators, or assigns to sell and dispose of all and singular the premises hereby granted or intended to be granted, and all benefit and equity of redemption of the said (*name of the mortgagor*) the grantor, his heirs, executors, administrators, or assigns therein, at public auction; such sale to be on or near the premises hereby granted; first giving notice of the time and place of sale, by publishing the same once each week, for three successive weeks, in (*name of the newspaper*) a newspaper printed in the county of aforesaid; and in his or their own names, or as the attorney of the said (*name of mortgagor*) the grantor, for that purpose by these presents duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance for the same in fee-simple; and out of the money arising from such sale, to retain the said sum of dollars, or the part thereof remaining unpaid, and also the interest then due on the same, together with the costs and charges of advertising and selling the same premises; rendering the surplus of the purchase-money, if any there be, over and above said sum and interest as aforesaid, together with a true and particular account of said sale and charges, to the said (*name of the mortgagor*) the grantor, his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said (*name of the mortgagor*) the grantor, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

And Provided Also, that until some breach of the condition of this deed, the grantee shall have no right to enter and take possession of the premises, and hold the same.

In Witness Whereof, We the said (*name of mortgagor*) and (*name of his wife*) wife of the said (*name of mortgagor*) in token of her release of all right and title of or to both dower and homestead in the granted premises, have hereunto set our hands and seals this day of in the year of our Lord eighteen hundred and

(*Signature of mortgagor.*) (*Seal.*)
(*Signature of wife of mortgagor.*) (*Seal.*)

Executed and Delivered in Presence of

ss. 19

Then personally appeared the above-named and acknowledged the above instrument to be free act and deed, before me,

Justice of the Peace.

(176.)

Mortgage by Indenture, with Power of Sale and Interest and Insurance Clause, to secure a Bond.

This Indenture, Made the day of in the year one thousand eight hundred and between (*name, residence, and occupation of the mortgagor*) party of the first part, and (*name, residence, and occupation of the mortgagee*) party of the second part:

Whereas, The said party of the first part is justly indebted to the said party of the second part, in the sum of (*amount of debt due on the bond*) dollars lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of (*amount of penalty*) lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of (*amount of debt due on the bond*) lawful money as aforesaid, to the said party of the second part, or his executors, administrators, or assigns, on the day of which will be in the year one thousand nine hundred and and interest thereon to be computed from at and after the rate of per cent. per annum, and to be paid (*here set forth the time and terms of the payment*).

And it is Thereby Expressly Agreed, That should any deftult be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of days, then and from thenceforth, that is to say, after the lapse of the said days, the aforesaid principal sum of (*amount of the debt*) with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding: As by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, aliene, release, convey, and confirm unto the said party of the seeond part, and to his heirs and assigns forever, all (*here describe carefully, the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances: to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever:

Provided Always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said (*name of the mortgagor*) for himself and his heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns. therein, at public auction, according to law. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under him or them, or either of them.

And it is Expressly Agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurers approved by the said party of the second part, and in an amount approved by the said party of the second part, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with interest at the rate of per cent. per annum.

In Witness Whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

(*Signature of mortgagor.*) (*Seal.*)
(*Signature of mortgagee.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF }
COUNTY. } ss.

On the day of in the year one thousand nine hundred and before me personally came the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(*Signature.*)

(177.)

Mortgage to Executor, with Power of Sale.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the mortgagor*) party of the first part, and (*name and residence of the mortgagee*) executor of the last will and testament of (*name and residence of the testator*) deceased, of the second part; whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of lawful money of the United States of America, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum (*state the terms of the payment, and if the bond was made to the testator, state that*) as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, aliene, release, convey, and confirm, unto the said party of the second part, and his successors and assigns forever, all (*here describe carefully the land or premises granted, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his successors and assigns, to their only proper use, benefit, and behoof forever. Provided always, and these presents are upon this express condition, that if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his successors or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be null and void. And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, his successors or assigns, the said sum of money and interest, as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his successors and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction, according to law. And as the attorney or attorneys of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

STATE OF
COUNTY. } SS.

On the day of in the year one thousand nine hundred and before me personally came the individuals described in, and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(*Signature.*)

(178.)

Mortgage of a Lease.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of mortgagor*) party of the first part, and (*name, residence, and occupation of mortgagee*) party of the second part: Whereas, (*name, residence, and occupation of the lessor of the lease to be mortgaged*) did, by a certain indenture of lease, bearing date the day of in the year one thousand eight hundred and demise, lease, and to farm let, unto the said party of the first part, and to his executors, administrators, and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances: To have and to hold the same unto the said party of the first part, and to his executors, administrators, and assigns, for and during and until the full end and term of years, from the day of and fully to be complete and ended, yielding and paying therefor unto the said (*name of the lessor*) and to his heirs, executors, administrators, or assigns, the yearly rent or sum of (*state the rent, and the times, or terms of payments*).

And Whereas, The said party of the first part is justly indebted to the said party of the second part, in the sum of dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of (*here give the amount of the debt to be paid*) as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, the estate or premises leased and transferred by said indenture of lease, that is to say (*here describe the premises in the same manner in which they are described in the lease*), together with all and singular the edifices, buildings, rights, members, privileges, and appurtenances thereunto belonging, or in anywise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and every clause, article, and condition therein expressed and contained.

To Have and to Hold the said indenture of lease, and other hereby granted premises, unto the said party of the second part, his executors, administrators, and assigns, to his and their only proper use, benefit, and behoof, for and during all the rest, residue, and remainder of the said term of years yet to come and unexpired; subject, nevertheless, to the rents, covenants, conditions, and provisions in the said indenture of lease mentioned.

Provided Always, And these presents are upon this express condition, that if the said party of the first part shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then and from thenceforth these presents, and the estate hereby granted, shall cease, determine, and be utterly null and void, anything hereinbefore contained to the contrary in anywise notwithstanding. And the said party of the first part does hereby covenant, grant, promise, and agree to and with the said party of the second part, that he shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And that the said premises hereby conveyed now are free and clear of all incumbrances whatsoever, and that the said party of the first part has good right and lawful authority to convey the same in manner and form hereby conveyed. And if default shall be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said party of the second part, and his assigns, to sell, transfer, and set over all the rest, residue, and remainder of the said term of years then yet to come, and all other the right, title, and interest of the said party of the first part, of, in, and to the same, at public auction, according to the act in such case made and provided: and as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make, seal, execute, and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer, or other conveyance in the law, for the same premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, or his assigns; which sale, so to be made, shall be a perpetual bar, both in law and equity, against the said party of the first part, and against all persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

In Witness Whereof, The said party of the first part to these presents has hereunto set his hand and seal the day and year first above written,

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF }
COUNTY OF } ss.

On the day of in the year one thousand nine hundred and before me personally came who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(*Signature.*)

(179.)

Mortgagee's Deed, under a Power of Sale.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and occupation of the mortgagee*) of the County of and State of party of the first part, and (*name and occupation of the grantee*) of the County of and State of of the second part.

Witnesseth, That whereas (*name and occupation of the owner and mortgagor who gave to the mortgagee the power now exercised*) of the County of and State of did, by a certain deed, dated the day of A.D. 19 , which deed is recorded in the Recorder's office of the County of in the State of on the day of A.D. 19 , in book of at page , grant, sell, and convey to the said party of the first part all the premises hereinafter described, to secure the payment of a certain debt (*or note, or bond*) in said deed particularly mentioned, and upon certain terms in said deed particularly declared; and whereas default hath been made in the payment of said debt (*note or bond*), the said premises were, by said party of the first part, duly advertised for public sale at the door of the court-house in the County of and State of on the day of A.D. 19 , in the manner prescribed by said deed, and were, upon the day and year and at the place last mentioned aforesaid, in pursuance of said notice, sold at public sale, and at said sale the said party of the second part was the highest and best bidder therefor, and bid for the tract first hereinafter named, the sum of dollars.

Now, therefore, These presents witness, that the said party of the first part, in pursuance of the power and authority in him vested in and by the said deed, and in consideration of the sum of dollars, to the said party of the first part paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath released and quitclaimed, and doth hereby convey, remise, release, and quitclaim to the said party of the second part, his heirs and assigns forever, all the right, title, and interest, as well in law as in equity, which the said party of the first part hath acquired by virtue of the deed above mentioned, of, in, and to all that certain tract , piece , or parcel of land situated in the County of and State of and described as follows, to wit, (*here describe the premises as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof ; and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances, which the said party of the first part acquired by virtue of said deed :

To Have and to Hold the aforesaid right, title, and interest of the said party of the first part, unto the said party of the second part, his heirs and assigns forever, as full and absolutely as the said party of the first part can, by virtue of the power and authority in him by said deed vested, convey the same.

In Witness Whereof, The party of the first part hath hereto set his hand and seal the day and year first above written.

(*Signature of seller.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY. }

On the day of nineteen hundred and , before me of the County of in the State of appeared who is personally known to me to be the real person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and then acknowledged the execution thereof as his free act and deed, for the uses and purposes herein mentioned.

(*Signature.*)

(180.)

Mortgage Deed, to Secure a Bond with Warrant, in use in Pennsylvania.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the debtor who is obligor of the Bond*) of the first part, and (*name, residence, and occupation of the creditor who is the obligee of the Bond*) of the other part, witnesseth, that

Whereas, the said in and by obligation or writing obligatory under hand and seal duly executed, bearing even date herewith, stand bound unto the said in the sum of lawful money of the United States of America, conditioned for the payment of the just sum of lawful money as aforesaid, in together with interest thereon, payable at the rate of six per cent. per annum.

until such time as a higher rate becomes lawful, and immediately thereafter at the highest rate, not exceeding per cent., legally chargeable. Together with all taxes and charges in nature thereof, that may be laid or levied upon the said obligation, or this indenture of mortgage, or the principal or interest moneys thereby secured, immediately upon their assessment, without any fraud or further delay.

Provided, However, and it is hereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space of days after any payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, for the space of days after notice in writing of its assessment shall be left upon the premises hereinafter described, then and in such case the whole principal debt aforesaid shall, at the option of the said obligee executors, administrators, or assigns, become due and payable immediately; and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary notwithstanding.

And Provided Further, however, and it is hereby expressly agreed, that if at any time thereafter, by reason of any default in payment, either of said principal sum at its maturity, or of said interest or of taxes and charges, within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon said obligation, or by virtue of said warrant of attorney, or a writ of scire facias is properly issued upon this indenture of mortgage, an attorney's commission for collection, viz.: per cent., shall be payable, and shall be recovered in addition to all principal, interest, and taxes then due, besides cost of suit, as in and by the said recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear.

Now this Indenture Witnesseth, that the said as well for and in consideration of the aforesaid debt or principal sum of and for the better securing the payment of the same, with interest as aforesaid, unto the said executors, administrators, and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar unto in hand well and truly paid by the said at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents grant, bargain, sell, aliene, enfeoff, release, and confirm unto the said heirs and assigns, (*here describe the land or premises granted, substantially as in Form* 107).

Together with all and singular the ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof,

To Have and to Hold the said hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said heirs and assigns, to and for the only proper use and behoof of the said heirs and assigns forever.

Provided Always, nevertheless, that if the said (*name of the creditor and obligor*) heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, unto the said executors, administrators, or assigns, the aforesaid debt or principal sum of on the day and time hereinbefore mentioned and appointed for payment of the same, together with interest and taxes as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, or assessments whatsoever, that then, and from thenceforth, as well this present indenture, and the estate hereby granted, as the said recited obligation shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And Provided, Also, that it shall and may be lawful for the said executors, administrators, or assigns, when and as soon as the principal debt or sum hereby secured shall become due and payable as aforesaid, to wit: on the day of Anno Domini one thousand eight hundred and or in case default shall be made for the space of days in the payment of interest on the said principal sum, after any payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, for the space of days after notice in writing of its assessment shall be left upon the above described premises, to sue out forthwith a writ or writs of scire facias upon this indenture of mortgage and to proceed thereon to judgment and execution, for the recovery of the whole of said principal debt, and all interest and taxes due thereon, together with an attorney's commission for collection, viz., per cent., besides costs of suit, without further stay, any law, usage, or custom to the contrary notwithstanding.

In Witness Whereof, The said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

(*Seals.*)

Sealed and Delivered in the Presence of us,

On the day of Anno Domini 19 , before me the above named personally appeared and in due form of law acknowledged the above Indenture of Mortgage to be act and deed, and desired the same might be recorded as such.

Witness my hand and official seal the day and year aforesaid.

(*Signature.*) (*Seal.*)

(181.)

Bond with Warrant of Attorney, Referred to in the preceding Form 180.

Know all Men by these Presents, That (*name, residence, and occupation of the debtor*) (hereinafter called the obligor) held and firmly bound unto (*name, residence, and occupation of the creditor*) (hereinafter called the obligee) in the sum of lawful money of the United States of America, to be paid to the said obligee certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, do bind and oblige heirs, executors, and administrators, firmly by these presents.

Sealed with seal. Dated the day of in the year of our Lord one thousand eight hundred and

The Condition of this Obligation is Such, That if the above bounden obligor , heirs, executors, or administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above named obligee , certain attorney, executors, administrators, or assigns, the just sum of lawful money as aforesaid, in together with interest thereon, payable at the rate of six per cent. per annum, until such time as a higher rate becomes lawful, and immediately thereafter at the highest rate, not exceeding per cent., legally chargeable, together with all taxes, and charges in nature thereof, that may be laid or levied upon this obligation, or upon the accompanying indenture of mortgage, or the principal or interest moneys hereby secured, immediately upon their assessment, without any fraud or further delay; then the above obligation to be void, or else to be and remain in full force and virtue:

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of days after any payment thereof shall fall due, or in the payment of any tax or charge, as aforesaid, for the space of days after notice in writing of its assessment shall be left upon the premises described in the accompanying indenture of mortgage, then and in such case the whole principal debt aforesaid shall, at the option of the said obligee , executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

And Provided Further, however, and it is hereby expressly agreed that if at any time hereafter, by reason of any default in payment, either of said principal sum at its maturity, or of said interest, or of taxes and charges, within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon this obligation, or by virtue of the warrant of attorney hereto attached, or a writ of scire facias is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., per cent., shall be payable, and shall be recovered in addition to all principal, interest, and taxes then due, besides costs of suit. And it is hereby declared and agreed that the said debt or principal sum of is the same which, by an indenture of mortgage of even date herewith, made between the above-named obligor and obligee is secured upon

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of us.

To Attorney of the Court of Common Pleas at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other Attorney of the said Court, or any other Court there or elsewhere.

Whereas, in and by a certain obligation bearing even date herewith, do stand bound unto in the sum of lawful money of the United States of America, conditioned for the payment of the just sum of lawful money as aforesaid, in together with interest thereon, payable at the rate of six per cent. per annum, until such time as a higher rate becomes lawful, and immediately thereafter at the highest rate, not exceeding per cent. legally chargeable. Together with all taxes and charges in nature thereof that may be laid or levied upon said obligation, or upon the accompanying indenture of mortgage, or the principal or interest moneys thereby secured, immediately upon their assessment; it being the same debt or principal sum which, by an indenture of mortgage of even date herewith, made between the above-named obligor and obligee is secured upon

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of days after any payment thereof shall fall due, or in the payment of any tax or charge, as aforesaid, for the space of days after notice in writing of its assessment shall be left upon the premises described in the accompanying Indenture of Mortgage, then and in such case, the whole principal debt aforesaid shall, at the option of the said obligee, executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary notwithstanding.

And Provided Further, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in payment, either of said principal sum at its maturity, or of said interest or of taxes and charges, within the time specified, a writ of fieri facias is properly issued upon the judgment obtained upon said obligation, or by virtue of this warrant, or a writ of scire facias is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz., per cent. shall be payable, and shall be recovered in addition to all principal, interest, and taxes then due, besides costs of suit.

These are to desire and authorize you, or any of you, to appear for heirs, executors, or administrators, in the said court or elsewhere, in an action of debt there or elsewhere brought, or to be brought, against heirs, executors, or administrators at the suit of the said obligee , executors, administrators, or assigns, on the said obligation, as of anytime present, or any other subsequent term or time elsewhere to be held, and confess judgment thereupon against heirs, executors, or administrators, for the sum of lawful money of the United States of America, debt, besides costs of suit, and an attorney's commission of per cent. in case payment has to be enforced by process of law, as aforesaid, by *non sum informatus*, *Nihil dicit*, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant. And do hereby, for heirs, executors, and administrators, remise, release, and forever quitclaim unto the said obligee , certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or in anywise touching or concerning the same.

In Witness Whereof, have set hand and seal this day of in the year of our Lord one thousand eight hundred and

(*Signatures.*) (*Seals.*)

Sealed and Delivered in the Presence of us,

(182.)

Mortgage Deed in use in Maryland.

This Mortgage, Made this day of in the year one thousand nine hundred and by (*name, residence, and occupation of the grantor*) of County, in the State of Maryland, Witnesseth:

Whereas, The said (*name of the mortgagor, with his occupation and residence*) has given to (*name, residence, and occupation of the mortgagee*) his promissory note of hand (*or bond*) (*here describe the note or bond or simple obligation to secure which this mortgage is given, by date, amount, time of payment, and other terms, if there are any*).

Now this Mortgage Witnesseth, That in consideration of the premises, and of the sum of one dollar, the said do grant unto the said in fee-simple, all that lot, tract, parcel, or parcels of land situate in the County and State aforesaid (*here describe with care the land or premises mortgaged, as directed in Form* 107).

Together with the buildings and improvements thereupon, and the rights, ways, waters, privileges, appurtenances, and advantages thereto belonging, or in anywise appertaining.

Provided, That if the said executors, administrators, or assigns, shall well and truly pay to the said the said sum of on or before the day of one thousand nine hundred and together with the legal interest thereon annually, and shall perform all the covenants herein on part to be performed, then this mortgage shall be void.

And the said (*name of the mortgagor*) do covenant and promise to pay to the said on the day of one thousand eight hundred and the said sum of together with the legal interest thereon annually.

And the said do hereby further covenant that in case of any default being made in any condition of this mortgage, then the whole mortgage debt hereby intended to be secured shall be deemed due and demandable.

And the said do further covenant to insure, and, pending the existence of this mortgage, to keep insured, the improvements on the hereby mortgaged ground, to the amount of at least dollars, and to cause the policy to be effected thereon to be so framed or indorsed as, in case of fire, to inure to the benefit of the said , representatives, or assigns, to the extent of lien or claim hereunder.

Witness, hand and seal the day and year first above written.

TEST:

(*Names of the witnesses.*)

(*Signatures.*) (*Seals.*)

STATE OF MARYLAND,
HARFORD COUNTY, } TO WIT.

I Hereby Certify, That on this day of in the year one thousand nine hundred and before the subscriber, a Justice of the Peace of the State of Maryland, in and for Harford County, aforesaid, personally appeared and acknowledged the foregoing mortgage to be act; and now, at the same time, before me, personally appeared also the within named mortgagee and made oath on the Holy Evangelists of Almighty God that the consideration set forth in the foregoing mortgage is true and *bonâ fide*, as therein stated.

An Assignment of Mortgage.

I hereby assign the above or within mortgage to (*the assignee*).
Witness my hand and seal, this of
(*Signature.*) (*Seal.*)

Release on Satisfaction of a Mortgage.

I hereby release the above (*or within*) mortgage.
Witness my hand and seal, this day of
(*Signature.*) (*Seal.*)

(183.)

Mortgage Deed to Secure a Bond, in use in South Carolina.

THE STATE OF SOUTH CAROLINA.

To all whom these Presents may concern, I (or we) (*name, residence, and occupation of grantor or grantors*), send greeting:

Whereas, the said in and by certain bond or obligation bearing date the stand firmly held and bound unto (*name of grantee*) in the penal sum of conditioned for the payment of the full and just sum of as in and by the said bond and condition thereof, reference being thereunto had, will more fully appear.

Now Know all Men, That the said in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said according to the condition of the said bond , and also in consideration of the further sum of three dollars to the said in hand well and truly paid by the said at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said (*describe carefully the land and premises granted, substantially as directed in Form* 107.)

Together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining.

To Have and to Hold all and singular the said premises unto the said heirs and assigns forever. And do hereby bind heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said heirs and assigns, from and against heirs, executors, administrators, and assigns, lawfully claiming, or to claim the same, or any part thereof.

And it is agreed, by and between the said parties, that the said mortgagor, heirs, executors, or administrators, shall and will forthwith insure the house and buildings on said lot, and keep the same insured, from loss or damage by fire, and assign the policy of insurance to the said executors, administrators, or assigns; and in case he or they shall at any time neglect or fail so to do, then the said mortgagee, executors, administrators, or assigns, may cause the same to be insured in their own name, and reimburse themselves for the premium and expense of such insurance under the mortgage.

Provided Always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said do and shall well and truly pay, or cause to be paid, unto the said the said debt or sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of said bond and condition thereunder written, then this deed of bargain and sale shall cease, determine, and be utterly null and void, otherwise it shall remain in full force and vigor.

And it is agreed, by and between the said parties, that to hold and enjoy the said premises until default of payment shall be made.

Witness hand and seal this day of , in the year of our Lord one thousand nine hundred and and in the year of the sovereignty and independence of the United States of America.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of,

STATE OF SOUTH CAROLINA, } ss.
COUNTY. }

Personally appeared before me, and made oath, that saw the within named sign, seal, and as act and deed, deliver the within written deed: and that with witnessed the execution thereof.

Sworn to before me this day of 19

(*Signature.*)

STATE OF SOUTH CAROLINA, } RENUNCIATION OF DOWER.
COUNTY. }

I, do hereby certify unto all whom it may concern, that wife of the within named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

Given under my hand and seal, this day of Anno Domini

(*Signature.*)

(184.)

Mortgage Deed with Power of Sale, to Secure Debt, in use in Georgia.

GEORGIA, } COUNTY.

This Indenture, Made the day of , in the year of our Lord one thousand nine hundred and between (*name and occupation of grantor or grantors*) of the County of of the one part, and (*name and occupation of grantee or grantees*) of the County of of the other part:

Witnesseth, That the said for and in consideration of the sum of in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, convey, and confirm unto the said heirs and assigns, all (*here describe the land or premises granted, substantially as directed in Form* 107).

To Have and to Hold the said with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of the said heirs, executors, administrators, and assigns, in fee-simple ; and the said the said bargained, unto the said heirs, executors, administrators, and assigns, against the said heirs, executors, and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

And the said hereby agrees that if the debt to secure which this deed is made is not promptly paid at maturity according to the tenor and effect of the said made at the execution of this deed, then the said may, and by these presents authorized to sell at public outcry to the highest bidder, for cash, all of said property, or a sufficiency thereof to pay said indebtedness with the interest thereon and the costs of the proceeding, after advertising the time, place, and terms of sale in newspaper for days. And the said may make to the purchaser or purchasers of said property good and sufficient titles in fee-simple to the same, thereby divesting out of the said all right, title, and equity that may have in and to said property, and vesting the same in the purchaser or purchasers aforesaid. The proceeds of said sale are to be applied first to the payment of the said debt and interest and the expenses of this proceeding, the remainder, if any, paid to

In Witness Whereof, The said and his wife, who hereby consents to the execution of this deed, have hereunto set their hands and affixed their seals, and delivered these presents, the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of us

(185.)

Mortgage to Secure a Promissory Note, in use in Kansas.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and occupation of grantor or grantors*) of in the County of (*residence*) and State of , of the first part, and (*name, residence, and occupation of grantee or grantees*) of the second part: witnesseth, that the said part of the first part, in consideration of the sum of dollars, to duly paid, the receipt of which is hereby acknowledged, ha sold, and by these presents do grant, bargain, sell, and mortgage to the said part of the second part, heirs and assigns forever, all that tract or parcel of land situate in the County of and State of Kansas, described as follows, to wit: (*here describe accurately the land or premises granted, substantially as directed in Form* 107), with the appurtenances, and all the estate, title, and interest of the said part of the first part therein.

This grant is intended as a mortgage to secure the payment of the sum of dollars, according to the terms of certain . And this conveyance shall be void if such payment be made as is herein specified. But if default be made in said payment, or any part thereof, as provided, then this conveyance shall become absolute, and it shall be lawful for said part of the second part, executors, administrators, and assigns, at any time thereafter, to sell the premises hereby granted, or any part thereof, in the manner prescribed by law; and out of all the moneys arising from such sale, to retain the amount then due for principal and interest, and also for statutory damages in case of protest, together with the costs and charges of making such sale, and per cent. on the amount secured by this mortgage, as a reasonable attorney's fee for foreclosure hereof, and the overplus, if any there be, shall be paid by the part making such sale, to the said heirs or assigns; and for the said consideration, the said part of the first part hereby waive appraisement of said real estate.

In Witness Whereof, The said part of the first part ha hereunto set hand and seal the day and year last above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF KANSAS,
} ss.
COUNTY OF

Be it Remembered, that on this day of A.D. 18 before me, in and for said County and State, came to me personally known to be the same person who executed the foregoing instrument, and acknowledged the execution of the same.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

(*Signature.*) (*Seal.*)

(186.)

Mortgage Deed in use in Missouri.

Know all Men by these Presents, That (*name and occupation of the grantor or mortgagor and his wife*) of the County of , in the State of Missouri, ha this day, for and in consideration of the sum of dollars to the said in hand paid, by (*name and occupation of mortgagee*) of the County of in the State of , the receipt whereof is hereby acknowledged, granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said the following described tracts or parcels of land, situate in the County of , in the State of Missouri, that is to say (*here describe the premises mortgaged as directed in Form* 107).

To Have and to Hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereto belonging, or in anywise appertaining unto the said heirs and assigns forever, upon this express condition:

Whereas, the said on the day of 18 , made, executed, and delivered to the said certain promissory note ; in words and figures following, to wit:

Now, if the said executor , or administrator , shall pay the sum of money specified in said note, and all the interest that may be due thereon, according to the tenor and effect of said note, then this conveyance shall be void; otherwise, it shall remain in full force and virtue in law, and the said or executor , or administrator may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at in the County of for cash in hand, first giving days' public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement ; and upon such sale, and the payment of the purchase money, shall execute and deliver a conveyance of the property so sold to the purchaser thereof; and any statement of fact or recital by the said in such conveyance, in relation to the advertisement, sale, receipt of the purchase money, or execution of said conveyance, shall be received as *prima facie* evidence of the truth thereof, and the said shall, with the proceeds of the sale aforesaid, pay, first, the expenses of this trust, and, next, whatever may be in arrear and unpaid on said note, whether of principal or interest, and the balance (if any) shall be paid over to the said or his legal representatives.

In Witness Whereof, have hereunto subscribed name , and affixed seal this day of 19

(*Signatures.*) (*Seals.*)

STATE OF MISSOURI, } ss.
COUNTY OF

On this day of 18 , before me personally appeared to me well known to be the person described in and who executed the foregoing instrument, and acknowledged that executed the same as free act and deed. And the said further declare to be single and unmarried.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in the day and year first above written.

My term expires 18 .

(*Signature.*) (*Seal.*)
(*Official designation.*)

(187.)

Short Deed of Mortgage in use in Indiana.

This Indenture Witnesseth: That I (*name and occupation of grantor or grantors*) of (*residence*) County, in the State of do hereby mortgage and warrant to (*name and occupation of grantee or grantees*) of (*residence*) County, in the State of the following real estate, in County, in the State of Indiana, to wit: (*here describe the land or premises granted substantially as directed in Form* 107). to secure the payment when become due of and the mortgagor expressly agree to pay the sum of money above secured, without relief from valuation laws.

In Witness Whereof, The mortgagor ha hereunto set hand and seal this day of A.D. 18

(*Signatures.*) (*Seals.*)

STATE OF INDIANA, } ss.
COUNTY.

Before Me, a in and for said County, this day of , 18 , acknowledged the execution of the annexed mortgage.

Witness my hand and seal, this day of , 18

(*Signature.*) (*Seal.*)

(188.)

Mortgage without Release of Dower or Homestead, in use in Wisconsin.

This Indenture, Made this day of in the year of our Lord one thousand eight hundred and between (*name and occupation of grantor or grantors*) of the County of State of of the first part, and (*name and occupation of the grantee or* *grantees*) of the County of and State of of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of dollars to in hand paid by the part of the second part, the receipt of which is hereby acknowledged, ha granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey unto the said part of the second part, and to heirs and assigns forever, all the following described real estate situate, lying, and being in the County of State of . and known as being (*here describe with sufficient care the land or premises granted, substantially as directed in Form* 107).

To Have and to Hold the above bargained premises with the appurtenances, unto the said part of the second part, heirs and assigns forever, Provided always, and these presents are upon this express condition, that if the said part of the first part, heirs, executors, administrators, and assigns, shall well and truly pay, or cause to be paid, to the said part of the second part, heirs, executors, administrators, or assigns the sum of according to the condition of certain bearing date executed by the said part of the first part, to the said part of the second part, as collateral security, then these presents and the said shall cease and be null and void.

And the said do further covenant and agree, that will pay all taxes and assessments of every nature that may be assessed on said premises, previous to the day appointed in pursuance of any law of the State for sale of lands for taxes. And also will pay the sum of dollars, as Solicitor's fees, in case of foreclosure of this mortgage, by reason of the non-performance of any of the conditions hereof by said part of the first part. And in case of the non-payment of said sum, or any part thereof, at the time or times above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid; then, and in either case, it shall be lawful for the said part of the second part, heirs, executors, administrators, or assigns, and the said part of the first part, do hereby covenant and agree, and by these presents empower and authorize the said part of the second part, heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deeds of conveyance in the law, pursuant to the statute in such cases made and provided; and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said together with the costs and charges, and the said sum of dollars, Solicitor's fees, as aforesaid; rendering the surplus money, if any there be, to the part of the first part, heirs, executors, administrators, or assigns, after deducting the costs of such vendue as aforesaid.

In Witness Whereof, the said part of the first part ha hereunto set hand and seal , the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on the day of 19 , personally came before me the above named to me known to be the person who executed the foregoing mortgage, and acknowledged execution thereof to be free act and deed, for the uses and purposes therein mentioned.

(*Signature.*) (*Seal.*)

(189.)

Mortgage Deed, with Release of Homestead and Dower, to Secure the Payment for Premises Sold, in use in Iowa.

Know all Men by these Presents, That (*here insert name and occupation of grantor or grantors*) of County and State of in consideration of the sum of dollars, in hand paid, do hereby sell and convey unto (*name and occupation of grantee or grantees*) of County and State of the following described real estate, situated in the County of and State of to wit: (*here describe carefully the land or premises granted, substantially as directed in Form* 107), containing acres, more or less, and hereby release all right of homestead and dower interest therein, and warrant the title thereto against the lawful claim of all persons whomsoever.

The above sale and conveyance is however made upon the following express conditions: That if shall pay or cause to be paid the sum of dollars, according to the tenor and effect of certain promissory note , described as follows:
bearing even date herewith and payable to the order of said with interest thereon from at the rate of per cent. per annum, payable annually, then the above sale and conveyance shall be void, but that otherwise it shall be and remain in full force and effect.

And also agree that the failure to pay promptly when due any part of the moneys hereby secured, or any interest accruing thereon, according to the terms of said promissory note , or allowing any taxes assessed upon any part of the premises above described to become delinquent and remain unpaid, or permitting said premises or any part thereof to be sold for taxes, shall cause the entire principal sum hereby secured, and all interest accrued thereon, to become immediately due and payable, and the said may thereupon proceed at once to foreclose this mortgage for such entire principal sum, accrued interest and costs.

And further agree in case of such foreclosure to pay a reasonable sum as attorney's fee, to be by the court fixed and determined, for foreclosing the same, which fee shall be included in the judgment in such foreclosure case. This mortgage is given to secure the purchase money of the premises hereinbefore described, and creates a lien for purchase money upon said premises in favor of said mortgagee.

Dated this day of A.D. 19 .

(*Signatures.*) (*Seals.*)

STATE OF IOWA, }
COUNTY, } SS.

Be it Remembered, That on this day of A.D. , before the undersigned, a within and for said County, personally appeared personally known to me to be the identical person whose name affixed to the above mortgage, as grantor thereto, and acknowledged the execution of the same to be voluntary act and deed.

Witness my hand and seal.

(*Signature.*) (*Seal.*)

(190.)

Mortgage Deed in use in Louisiana.

[This being a peculiar deed, presenting some unusual difficulties in filling up the blanks, it is thought best to give a full copy of a carefully-prepared deed, as the same was drawn and executed in accordance with the law of Louisiana.]

STATE OF LOUISIANA, }
PARISH AND CITY OF NEW ORLEANS. }

Be it Known, That on this *third* day of *June*, in the year of our Lord one thousand eight hundred and seventy and of the independence of the United States of America, the ninety-fourth.

Before Me, Andrew Hero, Jr., a Notary Public in and for the Parish and City of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned,

Personally Came and Appeared,—*Antonio Corbett*, of *this city*, who declared that he is justly and truly indebted unto *James Thompson*, *also of this city*, in the sum of *eight hundred dollars*, borrowed money this day had: in settlement and as evidence thereof the said *Antonio Corbett* has made and furnished his promissory note for like sum of *eight hundred dollars*, drawn to the order of and indorsed by *himself*, dated this day, and made payable at *twelve months after date*, with interest at the rate of *eight per cent. per annum*, from and after maturity, if not then paid, until final payment, which said *note*, after having been paraphed by me, the said Notary, to identify *it*, herewith, *was* delivered to the said *Thompson*, who hereby acknowledges the receipt thereof.

Now, in order to secure the full and punctual payment of the said *note*, in capital and interest, at maturity, the said *Corbett* moreover declared that *he does* by these presents specially mortgage and hypothecate in favor of the said *James Thompson*, *his* heirs and assigns, and of any and all such person or persons as may hereafter be the holder or holders of the said *note*, the following described property, to wit:

A certain lot of ground, together with the buildings and improvements thereon, and all rights and privileges thereto belonging, situate in the Faubourg Lafayette, Fourth District of this city, in the square numbered two hundred and eighty-five, which is bounded by Liberty (*late Ellen*), *Josephine, St. Andrew* (*formerly Gormley's Canal*), *and Franklin* (*late Fulton Avenue*) *streets, and designated as lot number six on a plan of the former city of Lafayette, and a sketch drawn by Hugh Grant, surveyor, under date of the* 13*th of March*, 1848, *and annexed for reference to an act passed before L. R. Kenny, late a Notary in said parish of Jefferson, which said lot measures, in American measure, twenty-seven feet front on said Liberty* (*late Ellen*) *street, by one hundred and twenty feet in depth, between parallel lines, being the same property which said mortgagor acquired by purchase from the widow and heirs of Henry Mumford, by an act passed before William Shannon, a Notary in this city, on the* 12*th day of March, eighteen hundred and sixty-seven.*

The said property is so to remain mortgaged and hypothecated until the full and final payment of the aforesaid *note* in capital and interest; the said mortgagor hereby binding *himself* and *his* heirs not to alienate, deteriorate, nor encumber the same to the prejudice of these presents, which are accepted by said mortgagee.

And the said *Corbett* further declared that *he does* by these presents bind and obligates *himself* to cause all and singular the buildings and improvements on the *lot of ground* afore described, to be insured and kept insured against the risk of fire, by one of the insurance companies of this city, in the sum of *one thousand dollars*, until the full and final payment of the afore described *note*, and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances; in default whereof, said mortgagee, and any and all holders of said *note*, is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagor. But this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And the said mortgagor further declared that *he does* by these presents consent, agree, and stipulate that in the event of the said *note* not being punctually paid at maturity, it shall be lawful for and *he does* hereby authorize the said mortgagee, or any other holder or holders thereof, to cause all and singular the property hereinbefore described, and herein mortgaged, to be seized and sold under executory process (issued by any competent court) without appraisement, to the highest bidder, payable in cash; the said mortgagor herein expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement, and of all laws or parts of laws relative to the appraisement of movable or immovable effects, etc., seized and sold under executory or other legal process, the said mortgagor hereby confessing judgment in favor of said mortgagee, and such person or persons who may be the holder or holders of said *note* for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said mortgagor further declares that *he does*, by these presents, bind and obligate *himself and his* heirs to pay and reimburse unto said mortgagee, and such person or persons as may be the holder or holders of said *note*, all such lawyer's or attorney's fees, together with all such costs, charges, and expenses as said mortgagee, or any such holder or holders, shall or may incur or pay, in the event of the non-payment of said *note* at maturity: said attorney's fees, however, to be fixed at *five* per cent. on the amount so in suit.

Now, to secure the faithful performance of the foregoing obligation, and the reimbursement and payment of the said lawyer's or attorney's fees, costs, charges, and expenses aforesaid, and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee, or any holder or holders of the aforesaid *note*, in causing insurance to be effected, on default of said mortgagor as aforesaid, the said mortgagor, by these presents, further specially mortgages and hypothecates the hereinbefore described *property* unto and in favor of said mortgagee, and all holders of said *note*.

According to the annexed certificate of the Recorder of mortgages in and for this city and parish, of even date herewith, the afore described property is free from all mortgages or other incumbrances in the name of said Corbett, save the privilege for drainage, and the mortgage which he granted in favor of his vendors by his said act of purchase, to secure the payment of three hundred dollars and interest. And here the said Campbell declared, that as last holder and owner, he has received payment in full, at the execution hereof, of a certain promissory note for the sum of three hundred dollars, drawn by said Corbett, to the order of and indorsed by himself, dated the twelfth day of March, eighteen hundred and sixty-seven, and made payable at twelve months after date, with interest at the rate of eight per cent. per annum from date until final payment: Said note representing the amount, payment of which is secured by the above recited special mortgage: and said Campbell moreover declared that in consideration of the payment, he hereby cancels and annuls said mortgage, and authorizes and requires the Recorder of Mortgages in and for this parish to erase the inscription thereof from his books: Said note was defaced and cancelled by me, Notary, at the execution hereof.

And now to these presents personally came and appeared Madam *Mary Corbett, the wife, of lawful age, of the said Antonio Corbett*, who, after having taken cognizance of the foregoing act, which I, the said Notary, carefully read and explained to *her*, declared and said that *she* approves and ratifies the same, and that it is *her* wish and intention to release in favor of the said mortgagee the *property* herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which *she is or* may be entitled, whether by virtue of *her* marriage with *her said husband* or otherwise.

Whereupon I, the said Notary, did inform the said *Mrs. Corbett*, apart and out of the presence and hearing of her husband, that by the laws of this State, the wife has a legal mortgage on the property of her husband: First, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. Secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by her contracted with her husband. And fifthly, for the amount of her paraphernal property alienated by her, and received by her husband, or otherwise disposed of for his individual interest: That in making *her* intended renunciation *she* would deprive *herself* irrevocably and forever of all rights of reclamation against the *property* herein described, whether under mortgage privilege, or otherwise.

And the said *Mrs. Corbett* did thereupon declare unto me, Notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature and kind whatever, to which she is, or may be, entitled by any laws now or heretofore in force in the State of Louisiana.

And the said *Antonio Corbett* being now present, aiding, and authorizing the said *Mrs. Corbett* in the execution of these presents, *she*, the said *Mrs. Corbett*, did again declare that *she* did and does hereby make a formal renunciation and relinquishment of all *her* said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of said mortgagee, binding *herself* and *her* heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus Done and Passed, in my office at New Orleans aforesaid, in the presence of *Paul A. Roberts* and *George Benson*, witnesses, both of this city, who hereunto sign their names with the parties, and me, the said Notary, the day and date aforesaid, *said Mistress Corbett not knowing how to write or sign her name, having hereto made her mark, after the same had been read and explained to her by me, Notary.*

Original signed:

Jas. Campbell, *Mary* her × mark *Corbett,*
Geo. Bayley, *Antonio Corbett,*
P. A. Winsor.

(Seal.) *Andrew Hero, Jr., Notary Public.*

A true copy of the original, on file, and of record in my office.

Andrew Hero, Jr., Not. Pub.

***New Orleans, La., March* 31, 1873.**

(191.)

Satisfaction of Mortgage, in use in New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF } ss.

This is to Certify, That a certain indenture of mortgage, bearing date the day of one thousand nine hundred and made and executed by (*name, residence, and occupation of mortgagor*) to (*name, residence, and occupation of mortgagee*) to secure the payment of dollars, and in the office of the of the County of in Liber of Mortgages, page on the day of in the year one thousand eight hundred and at o'clock in the noon, has been paid and satisfied, and may be discharged of record.

Witness hand and seal the day of A.D. 19

(*Signatures.*) (*Seals.*)

Sealed and Delivered in Presence of

STATE OF NEW JERSEY, }
COUNTY OF } ss.

I, one of the do hereby certify that on the day of A.D. one thousand eight hundred and before me personally appeared who, I am satisfied, the grantor mentioned in, and who executed the within certificate, and to whom I first made known the contents thereof; that thereupon acknowledged that had signed, sealed, and delivered the same as voluntary act and deed. upon a private examination, apart from her husband, before me, acknowledged that she had signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

(*Signature.*) (*Seal.*)

(192.)

Release of Deed of Trust, in use in Colorado.

Know all Men by these Presents, That whereas (*name, residence, and occupation of the mortgagor*) of the County of in the State of Colorado, by his certain deed of trust, dated the day of A.D. 19 and duly recorded in the office of the County Clerk and Recorder of County, in the State of Colorado, on the day of A.D. 19 in book of said County Records, on page conveyed to the undersigned (*name and occupation of trustee in the trust deed*) of the County of in the State of Colorado, as trustee certain real estate in said deed of trust described, in trust to secure to the payment of certain promissory note with interest, and all charges thereon, as in said deed of trust mentioned.

And Whereas, The said ha paid and fully satisfied said **note** together with all interest and charges thereon, according to its tenor;

Now, Therefore, At the request of the said as aforesaid, and in consideration of the premises, and in the further consideration of the sum of one dollar, to me in hand paid by the said the receipt whereof is hereby acknowledged, I trustee as aforesaid, do hereby remise, release, and forever quitclaim unto him, the said and heirs and assigns forever, all the right, title, and interest which I have in and to the said real estate, as the trustee in said deed of trust mentioned; and more particularly described as follows, to wit: (*describe the land or premises mortgaged and now released, as they are described in the trust deed or mortgage*) situate, lying, and being in the County of and State of Colorado.

To Have and to Hold the same, together with all and singular the privileges and appurtenances unto the said his heirs and assigns forever. And further, that the said trust deed is, by these presents, to be considered as fully and absolutely released, canceled, and forever discharged.

Witness my hand and seal, this day of A.D. 19

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF COLORADO, } ss.
COUNTY OF }

I, in and for said county, in the State aforesaid, do hereby certify that personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this day of A.D. 19

(*Signature.*) (*Seal.*)

(193.)

Brief Release of Mortgage, in use in Kansas.

In consideration of the payment of the debt named therein, I release the mortgage made by to me, which is recorded in Book of Mortgages, page of the Records of County, Kansas.

Witness my hand and seal, this day of 19

(*Signature.*) (*Seal.*)

STATE OF , } ss.
COUNTY. }

On this day of A.D. 19 before me, a in and for said County, personally came to me personally known to be the identical person whose name is affixed to the above release as maker, and acknowledged the execution of the same to be his **voluntary act** and deed.

Witness my hand and seal the day and year last above written.

(*Signature.*) (*Seal.*)

(**194.**)

Release of a Trust Deed Mortgage at the Request of the Creditor, in use in Virginia and West Virginia.

This Deed, Made this day of in the year one thousand nine hundred and between (*name, residence, and occupation of the party of the first part in the original trust deed*) of the of the first part, and (*name of the party of the second part in the original trust deed*) of the of the second part, and (*name of the party of the third part in the trust deed*) of the of the third part.

Whereas, The said in order to secure the said the payment of the sum of did, by deed bearing date on the day of 18 recorded in the office of the Clerk of convey to the said heirs and assigns, certain estate described in the said deed as follows: (*here describe the land or premises mortgaged and now released, in the same way as in the trust deed*) and the said sum of money having been fully paid to the said he the said ha requested that the estate conveyed by the said deed of trust to the said in the said property hereinbefore mentioned and described, be now released to the said This deed, therefore, witnesseth, that for and in consideration of the premises, as well as of the sum of five dollars, the said with the consent of the said signified by signing and sealing this deed, do release to the said all claim upon the said property.

Witness the following signatures and seals.

(*Signatures.*) (*Seals.*)

STATE OF VIRGINIA.

of To wit:

I, for the aforesaid, in the State of Virginia, do certify that whose name signed to the within writing, bearing date on the day of 18 ha acknowledged the same before me in my aforesaid.

Given under my hand this day of 19

(*Signature.*) (*Seal.*)

(**195.**)

Satisfaction of Mortgage, in use in Minnesota.

Know all Men by these Presents, That I (*or we*) (*name, residence, and occupation of assignee or assignees*) do acknowledge full payment and satisfaction of a certain indenture of mortgage executed by to dated the day of 19 , and recorded in the office of Register of Deeds for the County of State of Minnesota, on the day of 18 , in book of mortgages, page . Said mortgage was given upon the following described real estate, situate in the County of and State of Minnesota, viz.: (*describe the land or premises mortgaged and released, substantially in the same way as they are described in the mortgage*). *If the mortgage has been assigned, the assignee must insert the following clause in brackets.* [Which said mortgage was on the day of A.D. 18 , duly assigned and transferred by the said (*name of the mortgagee*) to (*the name of the assignee*) by written assignment, which was on the day of A.D. 18 , duly recorded in said office of Register of Deeds for the said County of in book of mortgages, page (*here enumerate in a similar way any subsequent assignments of the mortgage so as to show that it is now in the hands of the releasor.*] And do hereby authorize and require the Register of Deeds of the said County of to cancel and discharge the same of record in his office.

Witness hand and seal , this day of A.D. 19 .

In Presence of

(*Signatures.*) (*Seals.*)

STATE OF MINNESOTA, } ss.
COUNTY OF }

On this day of A.D. 19 , came before me to me personally known to be the identical person described in and who executed the within satisfaction deed acknowledged that executed the same freely and voluntarily for the uses and purposes therein expressed.

Notary Public, Minnesota.

(196.)

Assignment of Mortgage, in use in Michigan.

Know all Men by these Presents, that I (*name, residence, and occupation of assignor*) of the first part, for and in consideration of the sum of lawful money of the United States of America, to in hand paid by (*name, residence, and occupation of assignee*) of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said part of the second part, a certain indenture of mortgage, bearing date the day of one thousand eight hundred and made by and between (*here describe carefully the mortgage assigned, giving the names of the parties and the description of the premises mortgaged, as described in the mortgage*). And recorded in the office of the Register of Deeds of the County of , and State of Michigan, in Liber of Mortgages, at page with all and singular the premises therein mentioned and described, together with the (*note, bond, or debt*) or obligation therein also mentioned, and the moneys now due, or to become due, and the interest that may hereafter grow due thereon.

To Have and to Hold the same unto the part of the second part heirs and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And do hereby authorize and appoint the said part of the second part, true and lawful attorney, irrevocable, in name, or otherwise but at proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said and mortgage; and in case of payment, to give acquittance or other sufficient discharge, as fully as might or could do if these presents were not made; and do hereby for heirs, executors, and administrators, covenant, promise, and agree to and with the said part of the second part, that there is due upon the said and mortgage the sum of and that have good right and lawful authority to grant, bargain, and sell the same in manner aforesaid.

Sealed and delivered the day of 18 .

In Presence of

(*Signatures.*) (*Seals.*)

STATE OF MICHIGAN, } ss.
COUNTY OF }

On this day of A.D. one thousand nine hundred and before me, a in and for said County, personally appeared to me known to be the same person described in and who executed the within instrument, and acknowledged the same to be free act and deed.

(*Signature.*)

(197.)

Deed of Mortgage in use in New York.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name, residence, and occupation of the mortgagor*) of the first part, and (*name, residence, and occupation of the mortgagee*) of the second part.

Whereas, the said (*name of the mortgagor*) justly indebted to the said part of the second part, in the sum of lawful money of the United States, secured to be paid by certain bond or obligation bearing even date with these presents, in the penal sum of lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of lawful money as aforesaid, to the said part of the second part, executors, administrators, or assigns, on the day of which will be in the year one thousand eight hundred and and interest thereon to be computed from at and after the rate of per cent. per annum, to be paid . And it is thereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax or assessment be hereafter imposed upon the premises hereinafter described and become due or payable, and should the said interest remain unpaid and in arrear for the space of (*usually thirty*) days, or such tax or assessment remain unpaid and in arrear for (*usually ninety days*) then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said part of the second part, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding. As by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said part of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to in hand paid by the said part of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, release, convey, and confirm unto the said part of the second part, and to and assigns forever, all (*here insert a description of the premises mortgaged, as directed in Form* 107).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances :

To Have and to Hold the above granted, bargained, and described premises, with the appurtenances unto the said part of the second part, heirs and assigns, to their own proper use, benefit, and behoof forever.

Provided always, and these presents are upon this express condition, that if the said part of the first part, heirs, executors, or administrators, shall well and truly pay unto the said part of the second part, executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted shall cease, determine, and be void.

And the said heirs, executors, and administrators, do covenant and agree to pay unto the said part of the second part, executors, administrators, or assigns, the said sum of money and interest as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, or of the taxes or assessments on the premises hereby granted, that then and from thenceforth it shall be lawful for the said part of the second part executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same and all benefit and equity of redemption of the said part of the first part, heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided. And as the attorney of the said part of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be), unto the said of the first part, heirs, executors, administrators, or assigns ; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said part of the first part heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or either of them.

And the said do further covenant, grant, promise, and agree, that the said part of the first part, shall and will make, execute, acknowledge, and deliver in due form of law all such further or other deeds or assurances as may at any time hereafter be devised or required, for the more fully and effectually conveying the premises above described and hereby granted, or intended so to be, unto the said part of the second part executors, administrators, or assigns, for the purposes aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title, or interest therein, under this indenture or the power of sale herein contained, and the above granted premises against the said part of the first part, and all persons claiming through them will warrant and defend.

And it is expressly agreed by and between the parties to these presents, that the said part of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurers, and in an amount approved by the said part of the second part, and assign the policy and certificates thereof to the said part of the second part; and in default thereof, it shall be lawful for the said part of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with interest at the rate of per cent. per annum.

In Witness Whereof, the said part of the first part ha hereunto set hand and seal the day and year first above written.

And (*name of wife of mortgagor, if married*) signs and seals this deed in token of her relinquishment and release to the said mortgage of all her right and claim of dower in and to the premises hereby granted.

Sealed and Delivered in the Presence of

(*Signatures.*) (*Seals.*)

STATE OF
OF } SS.
COUNTY OF

On the day of in the year one thousand eight hundred and before me personally came to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(198.)

The Bond to be Secured by the Preceding Form of Mortgage.

Know all Men by these Presents, That (*name, residence, and occupation of the mortgagor*) held and firmly bound unto (*name, residence, and occupation of the mortgagee*) in the sum of lawful money of the United States of America, to be paid to the said executors, administrators, or assigns: For which payment well and truly to be made, bind heirs, executors, and administrators firmly by these presents. Sealed with seal . Dated the day of one thousand nine hundred and

The Condition of the above Obligation is such, That if the above bounden heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named executors, administrators, or assigns, the just and full sum of the day of which will be in the year one thousand nine hundred and and the interest thereon, to be computed from at and after the rate of per cent. per annum, and to be paid then the above obligation to be void, otherwise to remain in full force and virtue.

And it is Hereby Expressly Agreed, that should any default be made in the payment of the said interest, or any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax or assessment be hereafter imposed upon the premises described in the mortgage accompanying this bond, and become due or payable, and should the said interest remain unpaid and in arrear for the space of days, or said tax or assessment remain unpaid and in arrears for then and from thenceforth, that is to say, after the lapse or expiration of either one of the said periods, as the case may be, the aforesaid principal sum of with all arrearage of interest thereon, shall, at the option of the said or legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF
OF } SS.
COUNTY OF

On the day of in the year one thousand nine hundred and before me personally came to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(199.)

Satisfaction of Mortgage, in use in New York.

STATE OF NEW YORK, } SS.
COUNTY OF ,

I do hereby Certify, That a certain Indenture of Mortgage, bearing date the day of one thousand nine hundred and made and executed (*name, residence, and occupation of mortgagor*) on (*give the day of the date of the mortgage*) to (*name, residence, and occupation of mortgagee*) for the amount of and recorded in the office of County of in Lib. of Mortgages, page on the day of in the year one thousand eight hundred and o'clock, in the is paid.

And I do hereby consent that the same be discharged of Record.

Dated the day of 19

(*Signature.*) (*Seal.*)

In presence of

STATE OF NEW YORK, } SS.
COUNTY OF

On the day of in the year one thousand nine hundred and before me personally came to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(*Signatures*). (*Seals.*)

(200.)

Assignment of Mortgage.—Short Form.

Know all Men by these Presents, That I (*name, residence, and occupation of the assignor*) the mortgagee named in a certain mortgage deed, given by (*name, residence, and occupation of the mortgagor*) to said (*name of assignor*) to secure the payment of dollars $\frac{}{100}$, dated the day of in the year of our Lord nineteen hundred and recorded in the registry of deeds for the County of lib. fol. in consideration of the sum of dollars $\frac{}{100}$ to me paid by (*name, residence, and occupation of buyer and assignee*) the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said (*name of assignee*) and his heirs and assigns, said mortgage deed, the real estate thereby conveyed, and the promissory note, debt, and claim thereby secured, and the covenants therein contained.

To Have and to Hold the same to him the said (*name of assignee*) and his heirs and assigns, to his and their use and behoof forever; subject nevertheless to the conditions herein contained, and to redemption according to law.

In Witness Whereof, I, the said have hereunto set my hand and seal this day of in the year of our Lord eighteen hundred and

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

ss. A.D. 19

Then personally appeared the above-named and acknowledged the above instrument to be his free act and deed. Before me,

(*Signature.*)

(201.)

Assignment of Mortgage with Power of Attorney.

Know all Men by these Presents, That I, (*name, residence, and occupation of assignor*) party of the first part, in consideration of the sum of lawful money of the United States, to me in hand paid by (*name, residence, and occupation of assignee*) of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators, and assigns, a certain indenture of mortgage, bearing date the day of one thousand eight hundred and made by (*here state the name of the mortgagor, and briefly describe the mortgage deed, and state the volume and page where it is registered*) to which reference may be made, together with all the right, title, interest, and estate of said party of the first part, in and to the premises described and conveyed in and by said indenture of mortgage.

Together with the bond (or note) therein described and the money due and to grow due thereon, with the interest accruing or accrued, to have and to hold the same, unto the said party of the second part, his executors, administrators, and assigns, for his and their use, subject only to the proviso in the said indenture of mortgage mentioned; and I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney, irrevocably in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest: and in case of payment to discharge the same as fully as I might or could do if these presents were not made.

In Witness Whereof, I have hereunto set my hand and seal the day of one thousand nine hundred and

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

STATE OF }
COUNTY. } ss.

On this day of nineteen hundred and personally appeared before me known to me to be the person who signed and sealed the foregoing assignment of mortgage, and acknowledged the execution of the same for the uses and purposes therein set forth.

Given under my hand and seal at in said county aforesaid.

(*Signature.*) (*Seal.*)

(202.)

Assignment of Mortgage by a Corporation.

Know all Men by these Presents, That the (*legal name of the corporation assigning*) existing as a corporate body, in and under the laws of the State of of the first part, for and in consideration of the sum of lawful money of the United States, to the said corporation paid by (*name, residence, and occupation of assignee*) of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the day of one thousand eight hundred and made by (*here state the name of the mortgagor, and briefly describe the mortgage deed*) the same being duly registered in the office of the register of deeds for the County of and State of to which said indenture of mortgage reference may be had.

Together with the bond or obligation therein described, and the moneys due, and to grow due thereon, with the interest: to have and to hold the same unto the said party of the second part, his heirs and assigns, for his and their own use, subject only to the proviso in the said indenture of mortgage mentioned. And the said party of the first part doth hereby make, constitute, and appoint the said party of the second part its true and lawful attorney, irrevocable, in the name of the said party of the first part, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment, to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, the said party of the first part hath caused its corporate seal to be affixed to these presents, and the same to be signed by its attorney and president (*or other officer*) the day of in the year one thousand nine hundred and

(*Signature.*) (*Seal of the Corporation.*)

Signed, Sealed, and Delivered in Presence of

STATE OF } ss.
COUNTY. }

On the day of in the year one thousand nine hundred and , before me came with whom I am personally acquainted, and known to me to be the attorney and of the within named corporation, who, being by me duly examined, says, that the seal which is affixed to the within assignment is the corporate seal of the said corporation, and was so affixed by its authority, and acknowledged that he executed the same as its act and deed.

(*Signature.*)

(203.)

Discharge of Mortgage.—Short Form.

This Debt, secured by the mortgage, dated and recorded with deeds, lib. fol. has been paid to me by (*name of mortgagor*) and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said (*name of mortgagor*) and his heirs.

Witness my hand and seal A.D. 19

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

ss. A.D. 19 . Then said acknowledged the foregoing instrument to be free act and deed.

Before me,

(*Signature.*)

(204.)

Release and Quitclaim of Mortgage, as used in the Western States.

Know all Men by these Presents, That I (*name of mortgagee*) of the County of and State of for and in consideration of one dollar, to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quitclaim unto (*name of assignee or releasee*) of the County of and State of all the right, title, interest, claim, or demand whatsoever I may have acquired in, through, or by a certain indenture or mortgage deed, bearing date the day of A.D. 19 , and recorded in the recorder's office of County, in book of page to the premises therein described, and which said deed was made to secure a certain promissory note (*or bond*) bearing even date with said deed, for the sum of dollars and cents.

Witness my hand and seal this day of A.D. 19

(*Signature.*) (*Seal.*)

STATE OF } ss.
COUNTY OF }

I, in and for said county, in the State aforesaid, do hereby certify that who is personally known to me as the same person whose name is subscribed to the foregoing deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this day of A.D. 19

(*Signature.*) (*Seal.*)

(205.)

Discharge of Mortgage, as used in the Middle States.

STATE OF } ss.
COUNTY. }

I, (*name, residence, and occupation of mortgagee*) do hereby certify that a certain indenture (*or deed*) of mortgage, bearing date the day of one thousand eight hundred and made and executed by (*here state the name of the mortgagor, and describe the deed briefly*) and recorded in the office of County of in lib. of Mortgages, page on the day of in the year one thousand eight hundred and o'clock in the is paid. And I do hereby consent that the same be discharged of record.

Dated the day of 19

(*Signature.*) (*Seal.*)

In Presence of

STATE OF } ss.
COUNTY OF

On the day of in the year one thousand eight hundred and before me personally came who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(*Signature.*)

(206.)

Discharge and Satisfaction of Mortgage by a Corporation.

(*the legal name of the corporation*) a corporate body existing within and under the laws of the State of

Doth hereby Certify, That a certain mortgage, bearing date the day of in the year one thousand nine hundred and made and executed by (*here state the name of the mortgagor, and describe the mortgage briefly*) and recorded in the office of the register in and for the County of in lib. of Mortgages, page on the day of is paid.

In Witness Whereof, The said corporation has caused its corporate seal to be hereunto affixed, this day of in the year one thousand eight hundred and

(*Signature of attorney.*) (*Seal of corporation.*)

Witnessed by

STATE OF } ss.
COUNTY OF

On the day of in the year one thousand nine hundred and , before me personally came to me known, who, being by me duly sworn, did depose and say, that he resided in the city (*or town*) of that he is the attorney and president (*or other officer*) of the said corporation; that he knew the corporate seal of the said corporation, and that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by him by order of the said corporation, and that he signed his name thereto by the like order.

(*Signature.*)

(207.)

Release of a Part of the Mortgaged Premises.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name residence, and occupation of the mortgagee and releasor*) party of the first part, and (*name, residence, and occupation of the mortgagor to whom the lease is given*) party of the second part.

Whereas, The said party of the second part, by indenture of mortgage, bearing date the day of one thousand nine hundred and for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the said party of the first part.

And Whereas, The said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage :

Now this Indenture Witnesseth, That the said party of the first part, in pursuance of the said agreement, and in consideration of to him duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, released, quitclaimed, and set over, and by these presents does grant, release, quitclaim, and set over, unto the said party of the second part, all that part of the said mortgaged land (*here describe carefully and accurately all that part of the mortgaged land which it is intended to release, distinguishing it from that which is retained*).

Together with the hereditaments and appurtenances thereto belonging; and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the lands and premises hereby released and conveyed, to the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof forever, free, clear, and discharged of and from all lien and claim, under and by virtue of the indenture of mortgage aforesaid.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal on the day of in the year

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

STATE OF } ss.
COUNTY OF }

On the day of in the year one thousand nine hundred and before me personally came who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(*Signature.*)

(208.)

Deed Extending a Mortgage.

This Indenture, Made this day of A.D. 19 by and between (*name, residence, and occupation of the mortgagee*) the owner and holder of a certain promissory note (*or bond*) for the principal sum of dollars, given by (*name of mortgagor*) and secured by a mortgage of certain real estate in in the County of and State of dated day A.D. 19 and recorded in Registry of Deeds for the County of lib. fol. party of the first part, and the said (*name of mortgagor*) party of the second part,

Witnesseth, That the said parties, for themselves and their representatives, hereby mutually agree that the time for the payment of the principal of said note and mortgage debt shall be and the same is hereby extended for the term of years from the day of A.D. 19 and that the same is to bear interest from said date at the rate of per cent. per annum, payable on the day of and the day of in every year, until said principal sum shall be fully paid.

And the said party of the second part hereby covenants and agrees that he will not require the holders of said note and mortgage to receive payment of said mortgage debt during said extended term; that he will punctually pay the interest now due, and to grow due thereon, at the times and at the rate aforesaid; that he will keep the mortgaged premises in good repair, and insured against fire, and the taxes thereon duly paid, according to the provisions of said mortgage, and that at the expiration of said extended term he will pay the said mortgage debt, with all interest then due thereon.

It is expressly understood and agreed that nothing herein contained shall be construed to impair the security of said party of the first part, or his executors, administrators, or assigns, under said mortgage, or to affect or impair the lien on the real estate therein described which he has by virtue of said mortgage, nor affect or impair any rights or powers which he may have under the said note and mortgage for the recovery of the mortgage debt, with interest, in case of non-fulfilment of this agreement, or of any of the provisions hereof, by said party of the second part.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of mortgagee.*) (*Seal.*)
(*Signature of mortgagor.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

Commonwealth of ss. 19 . Personally appeared the above-named and acknowledged the above instrument to be their free act and deed.

Before me, (*Signature.*)

(209.)

Deed of Mortgage in use in the Province of Quebec.

On this day, the of in the year of our Lord one thousand nine hundred and before the undersigned, public notar duly commissioned and sworn in and for the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said Province, personally came and appeared (*insert the name, residence, and occupation of the mortgagor*), who acknowledged and confessed to be well and truly indebted unto (*insert the name, residence, and occupation of the mortgagee*) hereto present and accepting, for heirs and assigns, in the sum of currency, for value which the said do hereby acknowledge to have had and received of and from the said to full and entire satisfaction at the passing of these presents, whereof quit. Which said sum of he the said do hereby promise to well and truly pay, or cause to be well and truly paid, unto the said heirs or assigns, in gold coin, at its present standard of value, and of the same weight and fineness and number of pieces as at the date of the passing of this obligation, in before which time it will not be optional with or competent for the said mortgagor to pay the said sum or any portion thereof without the written consent of said mortgagee or representatives, with interest thereon till paid, at the rate of per centum per annum, to be accounted from and for security of the due and faithful payment of the said sum of and interest at the times and in the manner herein above agreed upon, the said ha mortgaged and hypothecated, and by these presents do mortgage and hypothecate, specially to and in favor of the said heirs and assigns, the hereinafter described landed property, which he declare well and truly to belong to (*insert him, her, or them, as the case may be; then insert the description of the premises conveyed in mortgage, substantially as in Form* 107).

Provided always, and it is specially covenanted and agreed by and between the said parties hereto, and this clause and condition is not to be or be held or considered to be penal or comminatory, but is of the essence of the present loan and obligation, and without which the same would not have been made or executed, that should the said mortgagor make default in any of the said interest payments for days after such interest payment shall become due and payable as aforesaid, then the said principal sum shall at once become exigible by the said mortgagee, h heirs or assigns, and that without any judicial demand, notice, or other formality whatsoever.

And the said mortgagor do hereby further bind and oblige immediately to insure and to keep constantly insured at own cost and expense against loss by fire, with such insurance company or companies as the said mortgagee or representatives may approve of, for a sum of money not less than the house and other buildings erected on the above described piece and parcel of land, and to transfer to the said mortgagee and representatives the policy or policies of such insurance and insurances, together with the sum of money thereby insured, the whole as long as any part or portion of the said amount in principal or interest may remain unpaid. Failing which, the said mortgagee heirs and assigns, shall have the right to do so, and the said mortgagor heirs and representatives, shall be bound to repay on demand to the said mortgagee heirs and assigns, all such sum and sums of money which he or they may have expended in so doing; and for security thereof the said premises are hereby further hypothecated to the extent of . The said mortgagor to pay all counsel and notarial fees in respect hereof, and for one copy of these presents for the said mortgagee and costs of registration; and when this obligation shall be paid, the said mortgagor shall bear the expense of drawing and registering a discharge.

And, at the making and passing of these presents, personally came, appeared, and intervened Dame wife of the said and by her said husband duly and specially authorized for the effects and purposes hereof, as appears by his signature hereto, who, after having had and taken communication of the foregoing deed of obligation and mortgage, doth hereby, until payment and satisfaction of the present obligation and mortgage, renounce, as well in her own name and behalf as for and in the name of the child or children born or to be born of her marriage with the said in favor of the said to all dower and all right or title of dower which she, the said and her said child or children, might or of right ought to have or claim in, to, or upon the hereby mortgaged premises, of which she hereby divests herself and her said child or children, declaring the same and every part thereof hereby freed, cleared, and discharged of and from all her and her said child or children's said rights of dower, and all other her matrimonial rights, whether legal, stipulated, or customary, until payment of the present obligation as aforesaid.

And for the execution of these presents the said parties have elected their domicil at their present place of residence above mentioned, where, etc.,

Done and Passed, at the said City of Montreal, in the office of the said notar under the number thousand hundred and on the day, month, and year first above and before written, and signed by the said with and in the presence of said notar these presents having been first duly read to the said parties.

(210.)

Deed of Mortgage, with Dower, in use in Ontario.

This Indenture, Made (*in duplicate*) the day of in the year of our Lord one thousand nine hundred and in pursuance of the Act respecting short forms of mortgages, between (*name, residence, and occupation of the mortgagor*) hereinafter called the mortgagor of the first part; (*name of the wife of mortgagor*) his wife of the second part;

and (*name, residence, and occupation of the mortgagee*) hereinafter called the mortgagee of the third part.

Witnesseth, That in consideration of of lawful money of Canada, now paid by the said mortgagee to the said mortgagor (the receipt whereof is hereby acknowledged), the said mortgagor do grant and mortgage unto the said mortgagee heirs and assigns forever, all and singular th certain parcel or tract of land and premises situate, lying, and being (*insert here the description of the premises mortgaged, substantially as in Form* 107). The said party of the second part hereby bars he dower in the said lands.

Provided, This mortgage to be void on payment of of lawful money of Canada, with interest at per cent. per annum, as follows: and taxes and performance of statute labor.

The said mortgagor covenant with the said mortgagee that the mortgagor will pay the mortgage money and interest, and observe the above proviso.

That the mortgagor ha a good title in fee-simple to the said lands; and that he ha the right to convey the said lands to the said mortgagee; and that on default the said mortgagee shall have quiet possession of the said lands, free from all incumbrances.

And that the said mortgagor will execute such further assurances of the said lands as may be requisite. (*Title-deeds*).

And that the said mortgagor ha done no act to encumber the said lands.

And that the said mortgagor will insure the buildings on the said lands to the amount of not less than dollars currency.

And the said mortgagor do release to the said mortgagee all claims upon the said lands, subject to the said proviso.

Provided. That the said mortgagee , in default of payment for months, may, upon giving notice in writing, enter upon and lease or sell the said lands; provided, that the mortgagee may distrain for arrears of interest; provided, that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable; provided, that until default of payment the mortgagor shall have quiet possession of the said lands.

In Witness Whereof, The said parties hereto have hereunto set their hands and seals.

Signed, Sealed, and Delivered in the presence of

Received on the day of the date of this Indenture,

COUNTY OF *to wit:*

I, (*name of witness*) of the of in the County of make oath and say: 1. That I was personally present, and did see the within instrument and duplicate thereof duly signed, sealed, and executed by the part thereto. 2. That the said instrument and

duplicate were executed at the 3. That I know the said part 4. That I am a subscribing **witness to** the said instrument and duplicate.

Sworn before me, at of in the County of **this** day of in the year of our Lord 18

A Commissioner for taking affidavits in B.R., etc.

(211.)

Full Deed of Mortgage, for General Use.

This Indenture, Made the day of in the year of our Lord one thousand **nine** hundred and between (*name, residence, and occupation of the mortgagor*) of the one part, hereinafter called the mortgagor, and (*name, residence, and occupation of the mortgagee*), hereinafter called the mortgagee, of the other part.

Whereas, the said mortgagor seized of, or well entitled to, the inheritance in fee-simple, of and in the lands and premises hereinafter described and released; and having occasion to borrow, and take up at interest, the sum of ha applied to and requested the said mortgagee to lend and advance the same, which he the said mortgagee ha agreed to do, on having the repayment thereof secured to by a mortgage of the said lands, tenements, and hereditaments, in manner hereinafter mentioned.

Now this Indenture Witnesseth, That in pursuance of the said agreement, and in consideration of the sum of to the said mortgagor in hand paid by the said mortgagee at or immediately before the sealing and delivery of these presents, the receipt whereof the said mortgagor do hereby acknowledge, and of and from the same, and every part thereof, do acquit, release, and discharge the said mortgagee heirs, executors, administrators, and assigns, and every of them, forever, by these presents, he the said mortgagor ha granted, aliened, released, and confirmed, and by these presents do grant, aliene, release, and confirm (and the said doth hereby release all her right of dower) unto the said mortgagee heirs and assigns, all tract , piece , and parcel of land, hereditaments, and premises, situate, lying, and being (*here describe carefully the premises*)

Together with all houses, buildings, rights, members, and appurtenances thereunto belonging, or in anywise appertaining; and all the estate, right, title, claim, and demand of the said mortgagor in, to, or upon the said lands and hereditaments, or any part thereof.

To Have and to Hold the said lands, tenements, hereditaments, and premises hereby released, or intended so to be, with their appurtenances, unto the said mortgagee heirs and assigns, to the only proper use of the said mortgagee heirs and assigns, forever.

Subject, nevertheless, to the proviso for redemption hereinafter con-agreed; that is to say, provided that if the said mortgagor heirs, executors, or administrators, shall pay unto the said mortgagee executors, administrators, or assigns, the full sum of of lawful money of (Prince Edward Island), without any abatement whatever, then these presents shall cease, and be void to all intents and purposes whatever. And the said mortgagor heirs, executors, and administrators, covenant with the said mortgagee executors and administrators, that he the said mortgagor heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said mortgagee executors, administrators, or assigns, the said principal sum of and interest, at the times and in the manner hereinbefore appointed for payment thereof, without any deduction or abatement whatever, according to the true intent and meaning of these presents. And also shall and will, during so long as the said sum of or any part thereof, shall remain due on the security of these presents, pay or cause to be paid to the said mortgagee executors, administrators, or assigns, interest for the said sum of or for so much thereof as for the time being shall remain unpaid, after the rate of centum per annum, on the day of in every year. And also that he the said mortgagor now in good right to grant, release, and convey the hereditaments hereby released, unto the said mortgagee heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents. And further, that it shall and may be lawful to and for the said mortgagee heirs and assigns, after default shall be made in payment of the said sum of and interest, or any part thereof respectively, contrary to the proviso hereinbefore contained, peaceably to enter upon the said hereditaments, and to hold and enjoy the same, without any interruption, claim, or demand whatsoever. And moreover, that he the said mortgagor and heirs, and all persons whatsoever, having any estate or interest in the premises, shall and will at all times hereafter, during the continuance of the said sum of and interest, or any part thereof, on this security, upon every reasonable request of the said mortgagee executors, administrators, and assigns, but at the costs and charges of the said mortgagor heirs, executors, and administrators, make and execute and perfect all such further conveyances and assurances in the law whatsoever, for the further and better conveying and assuring the said hereditaments hereby released, unto and to the use of the said mortgagee heirs and assigns; subject to the said proviso, according to the true intent and meaning of these presents, as by the said mortgagee heirs and assigns, or his or their counsel in the law, shall be reasonably desired or advised and required, and tendered to be made and executed.

And it is hereby further Provided, agreed, and declared, by and between the said parties to these presents, that if default shall be made in payment of the said sum of or the interest thereof, or any part thereof respectively, at the times hereinbefore appointed for payment of the same respectively, then and in any of such cases, and when and so often as any such default shall be made, the whole amount of the said principal money shall, notwithstanding any provision or condition of this mortgage to the contrary, immediately fall due and become payable, and it shall be lawful for the said mortgage executors, administrators, or assigns, at any time or times after such default shall have been so made, without any further consent on the part of the said mortgagor heirs and assigns (without prejudice, however, to the right of the said mortgagee heirs and assigns, to foreclose the equity of redemption, or to maintain any action under the covenants hereinbefore contained), to make sale and dispose of the said messuages, land, and other hereditaments and premises hereinbefore granted and released, or expressed or intended so to be, or any part or parts thereof, either together or in parcels, and either by public auction or private contract, with full power upon any such sale or sales to make any stipulations as to title or otherwise, which he or he shall deem necessary; and also with full power to buy in the said hereditaments and premises, or any part or parts thereof, at any sale or sales by public auction, or to rescind any contract or contracts for the sale of the same hereditaments and premises, or any part or parts thereof, and to re-sell the same hereditaments and premises which shall have been so bought in, or as to which any contract or contracts for sale shall have been rescinded as aforesaid, without being responsible for any loss which may be occasioned thereby. And, for the purposes aforesaid, or any of them, it shall be lawful for the said mortgagee executors, administrators, or assigns, to make and execute, or cause to be made and executed, all such agreements, deeds, conveyances, and assurances as he or executors, administrators, or assigns shall think fit. And it is hereby also agreed and declared, that upon any sale or sales which shall be made under the power of sale hereinbefore contained by the executors or administrators of the said mortgagee or by any other person or persons who may not be seized of the legal estate in the hereditaments and premises to be sold, the heirs of the said mortgagee or any other person or persons in whom the legal estate of the same hereditaments and premises, or any part thereof, shall be vested, shall make such conveyances and assurances of the same, for the purpose of carrying the sale thereof into effect, as the person or persons by whom the same shall be made shall direct.

Provided also, and it is hereby agreed and declared, that the said mortgagee executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained (if the sale or sales thereunder be by public auction) unless and until he or they shall have first given week's notice of such sale, by publishing such notice at least once in every week for successive weeks, in some newspaper published in

Provided also, and it is hereby further agreed and declared, that upon any sale purporting to be made in pursuance of the aforesaid power in that behalf, the purchaser or purchasers thereof shall not be bound to see or inquire whether either of the cases mentioned in the clause or provision lastly hereinbefore contained has happened, or whether any money remains due on the security of these presents, or otherwise, as to the propriety or regularity of such sale ; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as far as regards the safety and protection of the purchaser or purchasers thereat, be deemed and taken to be within the aforesaid power in that behalf, and to be valid and effectual accordingly, and the remedy of the said mortgagor heirs or assigns, in respect of any breach of the clause or provision lastly hereinbefore contained, shall be in damages only. And it is hereby also agreed and declared, that, upon any such sale as aforesaid, the receipt or receipts in writing of the said mortgagee executors, administrators, or assigns, for the purchase-money of the hereditaments and premises to be sold, shall be an effectual discharge or effectual discharges to the purchaser or purchasers for the money therein respectively expressed to be received, and that such purchaser or purchasers, after payment of or purchase-money, shall not be concerned to see to the application of such money, or be answerable for any loss, misapplication, or non-application thereof. And it is hereby further agreed and declared that the said mortgagee executors, administrators, and assigns, shall hold all and singular the moneys which shall arise from any sale which shall be made in pursuance of the aforesaid power in that behalf, upon the trusts following ; that is to say, upon trust in the first place by, with, and out of the same moneys, to reimburse himself or themselves, and to pay or discharge all the costs and expenses attending such sale or sales, or otherwise to be incurred in or about the exercise of the said power of sale or in anywise relating thereto ; and, in the next place, upon trust to apply such moneys in or towards satisfaction of all and singular the moneys which for the time being shall be due on the security of these presents, and then upon trust to pay the surplus [if any] of the said moneys unto the said mortgagor h heirs or assigns, for h and their proper use and benefit. And it is hereby also agreed and declared that the aforesaid power of sale shall and may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the moneys which for the time being shall be due on the security of these presents.

Provided Always, and it is hereby agreed and declared, that the said mortgagee, h executors, administrators, or assigns, shall not be answerable nor accountable for any involuntary losses which may happen in or about the exercise or execution of the aforesaid power or trusts, or any of them.

In Witness Whereof, the parties above mentioned have hereunto subscribed their names and affixed their seals to two copies thereof, interchange-

ably, at on the day of in the year of our Lord

(Name of mortgagor.) *(Seal.)*
(Name of mortgagee.) *(Seal.)*

Executed and interchanged in presence of
(Names of witnesses.)

$

Received, on the day of the date of the within written Indenture, from the within named mortgagee, the sum of being the consideration expressed in the same Indenture, to be paid by him to the within named mortgagor.

Witness,

This Deed was acknowledged before me by therein named apart from her husband, to have been voluntarily executed by her, and that she was aware of the nature of the contents thereof.

Dated this day of A.D. 19

J. P. for *County.*

CHAPTER XXXI.

LEASES.

A LEASE is a contract whereby one party (the tenant) takes the possession of the land and all that is on it, and the other party (the landlord) gives possession of the land, and reserves (that is, agrees to take) a rent, which the tenant pays him by way of compensation.

All things usually comprehended under the words "house," "farm," "land," "store," &c., pass to the tenant, where such words are used, unless there be an express exception. And inaccuracies as to qualities, names, measurements, or amounts, will be corrected, if there be enough in the lease to make the purposes and intentions of the parties certain. And letting to hire anything to be used carries with it all those appurtenances and accompaniments necessary for the proper use and enjoyment of the thing which belong to the letter.

A landlord is bound to put his lessee into possession with good title. If he covenants "to renew" generally, this means a renewal of the lease on the same terms, but without inserting in the new lease another covenant of renewal.

A landlord is under no legal obligation to repair the house, unless he expressly agrees to do so. If the house is never so much dilapidated and disfigured as to paper, paint, etc., and locks and blinds and doors and windows are out of order, and the like, the tenant can claim nothing of the landlord. Even if it becomes wholly uninhabitable by no fault of the house or of the landlord, as if it burns up, or is blown down, or if the overflow of a stream ruins a field or a farm, still the landlord is not bound to do anything, unless by special agreement.

But if the house is uninhabitable by its own fault, as if it has a noisome and unwholesome stench, or, according to one case, if it be overrun with rats, or so decayed as to be open to the weather, it would seem to be the law of this country that the tenant may leave the house; always provided, however, that the objection or defect be not one which the tenant knew or anticipated, or would have known or expected if he had made reasonable inquiry and investigation before he took his lease. And perhaps no tenant can leave his house, or refuse or abate his rent, for any objection or difficulty arising *after* he hires the house. But, strange to say, the important question what the tenant's rights are in such a case is still uncertain.

If the house be wholly destroyed, the tenant must still pay rent, under an ordinary lease; because the law looks upon the land as the principal thing, and the house as secondary. And not only so, but if the tenant covenants "to return and redeliver the house at the end of the term, in good order and condition, reasonable wear and tear only excepted," he would be bound under this agreement to rebuild the house if it were burned down. But recently all well-drawn leases have clauses providing that the rent shall cease or be abated while the premises are uninhabitable from fire or any other unavoidable calamity. A similar exception is added to the clause about returning the house at the end of the lease. If this exception be in, a tenant is not bound to rebuild, even if the house be burned through the carelessness of himself or his servants.

A tenant of a room, or of a suite of chambers, is entitled to the use of all the appurtenances and accommodations which fairly go with it, as of the front door and entry, water-closets, and of all windows, etc., proper to the enjoyment of what he hires. But an express agreement about all these things, and cellar-room, pump, and the like, is always safest.

The tenant is not bound to make general repairs without an express agreement. But he must make such as are necessary to preserve the house from injury, as from rain, if shingles or slates are blown off or glass broken. And he would be bound even for ornamental repairs, as paper and paint, under a covenant to return "in good order."

The tenant of a farm is bound, without express covenants, to manage and cultivate the same in such a manner as good husbandry and the usual course of management of such farms in his vicinity would require.

The times for payment of rent are usually specified in the lease, if not, they would be governed by the usage of the country, if there were any of sufficient distinctness and force.

A tenant under a lease which says nothing about underletting has a perfect right to underlet, remaining himself bound for his rent to his landlord.

A tenant is not responsible for taxes, unless it is expressly agreed in the lease that he shall be.

If there be a clause prohibiting him from underletting or assigning, and he agrees not to, nevertheless he may do so without forfeiting the land; but he will be, as before, liable for rent; and besides this, he will be responsible in an action for any damages which the landlord can show that he has sustained by such underletting.

It is usual to go further in the lease than this, and provide that such underletting shall make a forfeiture of the lease, and authorize the landlord to enter upon the premises and turn the tenant out. Where there is this covenant, if the tenant now underlets, the landlord cannot avail himself of the clause of forfeiture and afterwards hold the tenant for his rent. He may either hold him for his rent, and also for damages, or he may terminate the lease; but cannot do both. That is, if he continues to hold the tenant responsible for rent, he cannot prevent the tenant's letting somebody else occupy the house and pay to him (the tenant) the rent which he pays over.

A tenant of a farm, if his lease is terminated by any event which was uncertain, and which he could neither foresee nor control, is entitled to the annual crop which he sowed while his interest in and right to the farm continued.

If a lease be for a certain time, the tenant loses all right or interest in the land or premises when that time comes, and he must leave, or the landlord may turn him out at once. But he is a tenant at will, if he holds over after a lease with consent, or occupies the land or house or store without a lease but with consent and an oral bargain; and a tenant at will cannot leave, nor can he be turned out, without a notice to quit. The law on this subject is not uniform. In general, however, it is this. If rent is payable quarterly, or not more frequently, then there must be a quarter's notice. If rent is payable oftener, then the notice must be as long as the period of payment. Thus, if rent is payable monthly, there must be a month's notice; if weekly, a week's notice. But the notice must terminate on a day when the rent is payable. It may be given at any time, but operates only after the required interval or period between two payments. Thus, if a tenant whose lease terminates on the 31st of December holds over by consent, and pays rent quarterly, and the landlord wishes that he should leave the house on the last day of September, he may give notice on the preceding 30th day of June, or any day preceding that. But if he gives notice on any day before the 30th of June, the tenant will still have a right to stay until the 30th of September. Properly, the notice should specify the day, and the right day, when the tenant must leave; and should be in writing.

Where the rent is in arrear, the notice to quit may be more brief; the statutes of the different States vary on this point, but a frequent period is fourteen days. And if notice to quit is given because the rent is unpaid, it may be given at any time and will operate at the end of the period which the law designates; but it should specify the day on which the tenant must quit.

A tenant may give notice of his intention to quit, and generally it will be subject to the same rules already stated in reference to the notice given by a landlord. A tenant should give his notice to the party to whom he is bound to pay rent, or to an authorized agent of that party.

FIXTURES.

It is quite important that both tenant and landlord should have some knowledge of the law of fixtures; for this tells them what things the tenant may take away and what he cannot. For there are many things which a tenant may add, and afterwards remove, and many which he cannot remove. The method of affixing them may be a useful criterion, as it indicates the purpose of removal or otherwise. If with screws, or in such a way as to show that removal was intended, things may be taken away, when, if the same things were fastened more permanently, they could not be. In modern times the rule in favor of the tenant seems to extend as far as this: whatever he has added, and can remove, leaving the premises entirely restored and in as good order as if he had not removed it, that he may take away. Among the things held to be removable, in different adjudged cases, are these: ornamental chimney-pieces; coffee-mills; cornices screwed on; furnaces; fire-frames; stoves; iron backs to chimneys; looking-glasses; pumps; gates; rails and posts; barns or stables on blocks.

Among those held not removable are these: barns fixed in the ground; benches fastened to the house; trees, plants, and hedges, not belonging to a gardener by trade; conservatory strongly affixed; glass windows; locks and keys.

But almost every one of these might be removable, or not, according to the intent of the parties, and the rule above stated, of removableness with or without injury.

If a man sells a house, the law of fixtures is construed far more severely against him than against a tenant who leaves a house; that is, the seller must permit the buyer to hold a great many things which an outgoing tenant might remove. Of course, a seller may take what he will from his house before he sells it, or make what bargain the parties choose to make about the fixtures. But if he makes no such bargain, and sells the house, he cannot then take from the house what a tenant who put them there might take.

In favor of trade and manufactures, the law permits almost anything which was put in by a tenant for such purposes to be taken away, if the premises can be restored substantially to their original condition.

In most of the States leases for a term of more than one year must be in writing, otherwise they take effect only as tenancies at will, even as between the parties thereto.

In the following named States and Territories, such leases must be executed, acknowledged, and recorded in the same manner as deeds, otherwise they are invalid as against third parties without notice, viz.: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Wisconsin.

In Florida, leases for more than two years must be recorded.

In Indiana, Minnesota, New York, and Tennessee, leases for more than three years must be recorded.

In Kentucky, Virginia, and West Virginia, leases for more than five years must be recorded.

In Maine, Maryland, Massachusetts, and New Hampshire, leases for more than seven years must be recorded.

In New Jersey, leases for more than three years must be in writing.

In Pennsylvania, leases for more than three years must be in writing, and for more than twenty-one years must be recorded.

In New Mexico, Utah, Vermont, Washington, and Wyoming, leases must be executed and recorded in the same manner as deeds.

In North and South Dakota, leases of agricultural land are limited to ten years, those of city lots to twenty years.

The remarks in respect to the variety of forms which will be found at the close of the chapter on deeds of land, are equally applicable to forms of leases, and should be read in connection with the following forms.

(212.)

A Short form of a Lease.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and

Witnesseth, That I, (*name and residence of the lessor*) do hereby lease, demise, and let unto (*name and residence of the lessee*) a certain parcel of land, in the city (or town) of County of and State of with all the buildings thereon standing, and the appurtenances to the same belonging, bounded and described as follows (*or, a certain house in said city, giving the street and number, with the land under and adjoining the same.*)

(*The premises need not be described quite so minutely or fully as is proper in a deed or mortgage of land, but must be so described as to identify them perfectly, and make it certain just what premises are leased.*)

To Hold for the term of from the day of yielding and paying therefor the rent of

And said lessee does promise to pay the said rent in four quarterly payments on the day of (*or state otherwise just when the payments of rent are to be made*) and to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly at the end of the term, in as good order and condition, reasonable use and wearing thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor, and to pay the rent as above stated, and all taxes and duties levied or to be levied thereon during the term, and also the rent and taxes as above stated, for such further time as the lessee may hold the same, and not make or suffer any waste thereof; nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make or suffer to be made any alteration therein but with the approbation of the lessor thereto in writing, having been first obtained; and that the lessor may enter to view, and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof.

In Witness Whereof, The said parties have hereunto interchangeably set their hands and seals the day and year first above written.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

(213.)

A fuller Form, with a Provision for Abatement of Rent.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and by and between (*name and residence of lessor*) and (*name and residence of lessee*)

Witnesseth, That the said (*name of lessor*) does hereby lease, demise, and let unto the said (*name of lessee*) (*describe the premises as directed in Form* 211).

To Hold for the Term of commencing the day of A.D. one thousand nine hundred and the said lessee or those claiming under him, yielding and paying rent therefor the sum of for each and every year, and after the same rate for any part of a year.

And the said lessee, for himself, his heirs, executors, and administrators, does hereby covenant to and with the said lessor, and his heirs and assigns, that he or they will pay the said rent of in equal sums of the first of which payments shall be made on the day of A.D. one thousand nine hundred and and that he or they will pay rent after the same rate for such further time as he the said lessee, or those claiming under him, may hold the premises; that he or they will from time to time, upon request by the lessor, or his heirs or assigns, pay to them such sum or sums of money as shall be equal to the amount of the taxes and duties, and water-taxes, that shall be levied or assessed on the demised premises for each year and part of a year during the term aforesaid, and during such further time as the said lessee and those claiming under him may hold the premises; that he or they will not suffer nor commit any strip or waste in the premises; that he or they will not assign this lease, nor underlet the whole or any part of the premises, to any person or persons; and that no alterations or additions shall be made during the term aforesaid, in or to the same, without the consent of the said lessor, or of those having his estate in the premises, being first obtained in writing, allowing thereof; and also that it shall be lawful for the said lessor, and those having his estate in the premises, at seasonable times to enter into and upon the same to examine the condition thereof; and further, that he the said lessee, and his representatives, shall and will, at the expiration of said term, peaceably yield up unto the said lessor, or those having his estate therein, all and singular the premises, and all future erections and additions to or upon the same, in as good order and condition, in all respects (reasonable wearing and use thereof, and damage by fire, and other unavoidable casualties excepted) as the same now are, or may be put into by the said lessor or those having his estate in the premises.

Provided always, and these presents are upon this condition, that if the said rent shall be in arrear, or the said lessee or his representatives or assigns do or shall neglect or fail to perform and observe any or either of the above covenants hereinbefore contained, which on his or their part are to be performed, then and in either of said cases, the said lessor, or those having his estate in the said premises, lawfully may, immediately or at any time thereafter, and while such neglect or default continues, and without further notice or demand, enter into and upon the said premises, or any part thereof, in the name of the whole, and repossess the same as of his former estate, and expel the said lessee and those claiming under him, and remove his or their effects (forcibly if necessary) without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant.

And provided also, that in case the premises, or any part thereof, shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injuries sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use and habitation by the said lessor, or these presents shall thereby be determined and ended at the election of the said lessor or his legal representatives.

In Testimony Whereof, The said parties have set their hands and seals on the day and year first above written, to this and to another instrument of like tenor and date.

(*Signatures.*) (*Seals.*)

Signed, Sealed, and Delivered in Presence of

(214.)

A Short Form of Lease, in use in the Western States.

This Indenture, Made this day of 19 , between (*name and residence of the lessor*) party of the first part, and (*name and residence of the lessee*) party of the second part, witnesseth that the said party of the first part, in consideration of the covenants of the said party of the second part, hereinafter set forth, do by these presents lease to the said party of the second part the following-described property, to wit (*describe the property as directed in Form* 211).

To Have and to Hold the same to the said party of the second part, from the day of 19 , to the day of 19 . And the said party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the said party of the first part, as rent for the same, the sum of dollars, payable as follows, to wit (*here state the times and terms of payment, much as in Form* 211).

The said party of the second part further covenants with the said party of the first part, that at the expiration of the time mentioned in this lease, peaceable possession of the said premises shall be given to said party of the first part, in as good condition as they now are, the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may, at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer: the said party of the second part hereby waiving any notice of such election, or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness the hands and seals of the parties aforesaid.

(*Signature of lessor.*) (*Seal*)
(*Signature of lessee.*) (*Seal.*)

(215.)

A Lease of City Property, in use in Chicago.

This Indenture, Made this day of in the year of our Lord one thousand **nine** hundred and between (*name of the lessor*) of the city of in the County of and State of party of the first part, and (*name and residence of the lessee*) of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, or his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in the city of Chicago, in the County of Cook, and State of Illinois, and known and described as follows, to wit (*here describe the premises as directed in Form* 211).

To Have and to Hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the day of in the year of our Lord one thousand **nine** hundred and for and during, and until the day of in the year of our Lord one thousand **nine** hundred and the said party of the second part paying rent therefor, as hereinafter stated.

And the said party of the second part, in consideration of the leasing the premises aforesaid, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, at the house (*or office or store*) of the said party of the first part, numbered in Street, Chicago, or at the house or office of his assigns, as rent for the said demised premises, the sum of (*state the whole annual rent*) payable as follows (*here state the times and terms of the payments of rent*).

And it is further agreed by the said party of the second part, in consideration of the leasing of the premises, that the said party of the second part shall and will pay, or cause to be paid, promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises, during the continuance of this lease, by the Board of Water Commissioners of the city of Chicago, and save the said premises and the said party of the first part harmless therefrom, and that he will keep said premises in a clean and healthful condition, in accordance with the ordinances of the city and the direction of the Sewerage Commissioners.

And the said party of the second part hereby covenants and agrees, in case of delay in payment of any water-rent levied upon said premises during said term, to pay said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident, and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto.

It is Expressly Understood and Agreed, By and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day and at the place of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, or his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the party of the second part, or his legal representatives, shall offer to pay the same then and there, such offer shall prevent such forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part, or his assigns, to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give to the said party of the first part, and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property, peaceably to the said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and, if he shall remain in the possession of the same days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated; and in order to enforce a forfeiture of this lease for non-payment of rent when due, no demand for rent when due shall be required, any demand being hereby expressly waived.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

(216.)

A Lease with Provisions for Taxes and Assessments.

This Indenture, Made the day of in the year one thousand nine hundred and between (*name and residence of lessor*) of the first part, and (*name and residence of lessee*) of the second part, witnesseth, that the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, has granted, demised, and to farm letten, and by these presents does grant, demise, and to farm let, unto the said party of the second part, and his executors, administrators, and assigns, all (*describe the premises as directed in Form* 211).

To Have and to Hold the said above mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the day of one thousand eight hundred and for and during and until the full end and term of thence next ensuing; and fully to be complete and ended, yielding and paying therefor unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term hereby granted, the yearly rent or sum of lawful money of the United States of America, in equal quarter-yearly payments, to wit: on the first day of (*name the months*) in each and every of the said years: **Provided always, nevertheless,** that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter and remove all persons therefrom, and the same to have again, repossess, and enjoy, as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the second part, for himself and his heirs, executors, and administrators, does covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second part, his executors, administrators, or assigns, shall and will yearly, and every year during the said term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents. And that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own proper costs and charges, bear, pay, and discharge all such taxes, duties, and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.

And that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, by these presents, that the said party of the second part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises, without any manner of let, suit, trouble, or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In Witness Whereof, The said parties have hereunto set their hands and seals, interchangeably, to two copies of this indenture.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

(217.)

A Lease, with Covenants about Water-Rate, and Injury by Fire, in use in New York.

This Agreement, Made between (*name and residence of lessor*) party of the first part, and (*name and residence of lessee*) party of the second part, witnesseth, that the said party of the first part has agreed to let, and hereby does let, and the said party of the second part has agreed to take, and hereby does take, the following-described premises (*here describe the premises, as in Form* 211) for the term of to commence and to end to be occupied (*describe the intended occupation*) and not otherwise. And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of dollars, payable (*state the times and terms of the payments*).

And shall also pay the Croton water-rate, and will keep the plumbing work, pipes, glass, and the premises generally in repair, and will surrender them at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit.

And the said party of the second part further covenants that he will not assign, let, or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that he will not occupy the said premises, nor permit the same to be occupied for any business deemed extra-hazardous without the like consent, under the like penalty. And the said party of the second part further covenants that he will permit the said party of the first part, or his agent, to show the premises to persons wishing to hire or purchase, and three months next preceding the expiration of the term will permit the usual notices of "to let," or "for sale," to be placed upon the windows, walls, or doors of said premises, and remain thereon without hindrance or molestation.

And also, that if default be made in any of the covenants herein contained on the part of the party of the second part, or if the said premises or any part thereof shall become vacant during the said term, the said party of the first part may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and re-let the said premises or any part thereof in one or more parcels, as the agent of the said party of the second part, and receive the rent thereof, applying the same, first to the payment of such expense as he may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said party of the second part; and, in case of deficiency, said party of the second part will pay the same.

And the said party of the second part hereby further covenants that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said party of the first part, shall wholly cease and determine; and the said party of the first part shall and may re-enter the said premises, and remove all persons therefrom; and the said party of the second part hereby expressly waive the service of any notice in writing of intention to re-enter, as provided for in the third section of an act entitled "An Act to abolish Distress for Rent, and for other Purposes," passed May 13, 1846.

And it is further agreed between the parties to these presents, that, in case the building hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible by the party of the first part; that, in case the damage shall be so extensive as to render the building untenantable, the rent shall cease until the same be repaired; provided the damage be not caused by the carelessness or negligence of the party of the second part, or his agents or servants.

If the building be so damaged that the owner shall decide to rebuild, the term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

In consideration of the letting of the premises above mentioned to the above named (*name of the lessee*) and of the sum of one dollar to him paid by the said party of the first part, the said party of the second part does hereby covenant and agree to and with the party of the first part above named, and his legal representatives, that if default shall at any time be made by the said party of the second part, in the payment of the rent and performance ot the covenants above contained on his part to be paid and performed, that he will well and truly pay the said rent or any arrears thereof, that may remain due unto the said party of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said party of the first part.

Witness our hands and seals this day of
in the year of our Lord one thousand, nine hundred and
(*Witness.*)

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

(218.)

A Lease by Grant, in use in the Western States.

This Indenture, Made and entered into on the day of one thousand nine hundred and by and between (*name of lessor*) of (*residence of lessor*) party of the first part, and (*name of lessee*) of (*residence of lessee*) party of the second part, witnesseth, that the said party of the first part, in consideration of the rents reserved, and the covenants hereinafter contained, does hereby grant, demise, and to farm let, unto the said party of the second part (*describe the premises as in Form* 211).

To Have and to Hold the Same, With all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and his executors, administrators, and assigns, for and during the full end and term of commencing on the day of 18 , and ending on the day of 18 , under and subject to the stipulations hereinafter contained, the said party of the second part yielding and paying to the said party of the first part, for the said premises, the annual rent of payable in equal quarterly (*or monthly*) payments ; that is to say on the during said term ; which rent the said party of the second part, for himself and his executors, administrators, and assigns, covenants well and truly to pay, at the times aforesaid.

And the said party of the second part covenants and agrees that if the rent aforesaid should at any time remain due and unpaid, the same shall bear interest at the rate of per cent. per annum, from the time it so becomes due, until paid. And the said party of the second part further covenants and agrees that it shall be lawful for the said party of the first part, and those having freehold estate in the premises, at reasonable times to enter into and upon the same, to examine the condition thereof ; and also that the said party of the second part, and his legal representatives, shall and will, at the expiration of this lease, whether by limitation or forfeiture, peaceably yield up to the said party of the first part, or his legal representatives, the said premises, in the condition received, only excepting natural wear and decay, and the effects of fire ; and that the said party of the second part, for and during all the time that he, or any one else in his name, shall hold over the premises after the expiration of this lease, in either of said ways, shall and will pay to said party of the first part double the rent hereinbefore reserved. Also the said party of the second part further covenants and agrees that any failure to pay the rent hereinbefore reserved, when due, and within days after a demand for the same, shall produce an absolute forfeiture of this lease, if so determined by said party of the first part, or his legal representatives. Also that this lease shall not be assigned, nor the said premises, or any part thereof, underlet, without the written consent of the said party of the first part, or his legal representatives, under penalty of forfeiture. And that all repairs of a temporary character, deemed necessary by said party of the second part, shall be made at his own expense, with the consent of the said party of the first part, or his legal representatives, and not otherwise.

Provided Always, and these presents are on this express condition, that if the said party of the second part, or his legal representatives, shall fail to pay the rent hereinbefore reserved, for the space of days after the same shall have become due, or shall fail to perform any of the covenants hereinbefore entered into on his and their part, then the said party of the first part shall be at liberty to declare this lease forfeited, by serving a written notice to that effect on the said party of the second part, or his legal representatives, and to re-enter upon and take possession of the demised premises, free from any claim of the lessee or any one claiming under him. And all estate herein granted shall, upon service of such notice, forthwith cease, and said lessor, his heirs, legal representatives, or assigns, shall be forthwith entitled to the possession of the demised premises without any further proceeding at law or otherwise, to recover possession thereof. And the said party of the first part covenants and agrees with the said party of the second part, and his legal representatives, that, the covenants herein contained being faithfully performed by the said party of the second part, he shall peaceably hold and enjoy the said demised premises, during the term aforesaid, without hindrance or interruption by the said lessor or any other person.

In Witness Whereof, The said parties have executed this indenture in duplicate, signing their names and affixing their seals to both parts thereof, the day and year in this behalf above written.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

(219.)

A Lease by Certificate, with Surety.

This is to Certify, That I have let and rented unto (*name of lessee*) (*describe the premises, as in Form* 211) for the term of from the day of 19 at the annual rent of dollars, payable (*state time of payment*). The premises above mentioned, or any part thereof, shall not be let or underlet without the written consent of the landlord, under penalty of forfeiture and damages; nor shall the same be used or occupied for any business deemed hazardous on account of fire, without the like consent under the like penalty.

Given under my hand and seal the day of 19

(*Signature.*) (*Seal.*)

(*Witnesses.*)

This is to Certify, That I have hired and taken from (*name of lessor*) (*describe the premises in the same way as in the preceding part*) for the term of from the day of 19 at the rent of dollars, payable

And I hereby promise to make punctual payment of the rent in manner aforesaid, and to quit and surrender the premises, at the expiration of said term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted, and engage not to let or underlet the whole or any part of the said premises, without the written consent of the landlord, under the penalty of forfeiture and damages; and also not to use or occupy the said premises for any business deemed extra hazardous, on account of fire, without the like consent, under the like penalty.

Given under my hand and seal the day of 19

(*Signature.*) (*Seal.*)

(*Witnesses.*)

In Consideration of the letting of the premises above described, and for the sum of one dollar, I do hereby become surety for the punctual payment of the rent, and performance of the covenants, in the above-written agreement mentioned, to be paid and performed by (*name of lessee*) and if any default shall be made therein, I do hereby promise and agree to pay unto (*name of lessor*) such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said agreement without requiring any notice of non-payment, or proof of demand being made.

Given under my hand and seal the day of 19

(*Signature.*) (*Seal.*)

(*Witnesses.*)

(220.)

A Lease of City Property, in use in St. Louis.

This Indenture, Made the day of in the year of our Lord nineteen hundred and between (*name and residence of the lessor*) of the first part, and (*name and residence of lessee*) of the second part, witnesseth, That the said party of the first part, in consideration of the rents, covenants, and stipulations hereinafter mentioned, and hereby agreed to be paid, kept, and performed by the said party of the second part, his executors, administrators, and assigns, hath leased, and by these presents doth lease, to the said party of the second part the following-described premises (*here describe the house, as of brick, or stone, number of stories, and number in the block*) in block No. in the city of St. Louis, to commence on the day of 19 for and during the term of at the annual rent of payable in four equal quarterly payments, beginning three months from the date hereof. Any failure to pay each payment of rent when due, to produce a forfeiture of this lease, if so determined by said lessor or his successors. The lease of said tenement or any part of it is not assignable, nor is said tenement or any part of it to be underlet, without the written consent of said lessor, under penalty of forfeiture. And it is hereby covenanted, that, at the expiration of this lease, the said tenement and premises are to be surrendered to said lessor, his heirs, assigns, or successors, in the condition received, only excepting its natural wear and decay, or the effects of accidental fire. All repairs deemed necessary by said lessee to be made at his expense. All fixtures shall be bound for the rent.

The said lessee and all holding under him hereby engaging to pay the rent above reserved, and double rent for every day when he or any one else in his name shall hold on to the whole or any part of said tenement, after the expiration of this lease, or of its forfeiture for non-payment of rent, etc. This tenement and premises to be kept free of any nuisance in or adjacent thereto, at the expense of the said lessee.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

(*Witness.*)

(221.)

What is called a Country Lease, in use in the Western States.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name of lessor*) of the of in the County of and State of party of the first part, and (*name and residence of lessee*) party of the second part, witnesseth, That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying and being in the township of County of State of known and described as follows, to wit (*describe the premises in such way as to identify them perfectly by situation, metes, and bounds, or otherwise*).

To Have and to Hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the day of in the year of our Lord one thousand nine hundred and for and during, and until the day of in the year of our Lord one thousand nine hundred and paying rent therefor as hereinafter stated.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for the said demised premises, the sum of dollars, annual rent, payable quarterly, in four equal quarterly payments, the first payment to be due and made in three months from the date of this lease, payable at the (*here state the place where the rent should be paid*).

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident, and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representative will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto.

It is Expressly Understood and Agreed by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day and at the place of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified, for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the said party of the second part shall offer to pay the same then and there, such offer shall prevent said forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part or his assigns, to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he now has or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give to the said party of the first part and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property, peaceably, to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in the possession of the same days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed by and between the parties, tha the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

(222.)

A Ground Lease.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and residence of lessor*) party of the first part, and (*name and residence of lessee*) party of the second part, witnesseth, That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, hath demised and leased to the party of the second part, all those premises situate in the of in the County of and State of known and described as follows, to wit (*here give such description of the premises as shall identify them, and distinguish them from any other*).

To Have and to Hold The above described premises, with the appurtenances, unto the party of the second part, from the day of in the year of our Lord one thousand eight hundred and for and during, and until the . And the party of the second part, in consideration of the leasing of the premises aforesaid, does covenant and agree with the party of the first part to pay to the party of the first part as rent for said demised premises, at the office of in the sum of (*state the sum to be paid as annual rent*) in four equal quarterly payments, each of them the sum of dollars, to be paid on the first (*or other*) day of the month of (*the four months in which the rent is payable*) in each year (*or describe otherwise the terms and times of the payments as they may have been agreed upon*); and also that the said party of the second part will pay, or cause to be paid, all water-rates, and all taxes, and assessments that may be laid, charged or assessed on said demised premises pending the existence of this lease; or if at any time after any tax, assessment, or water-rate shall have become due or payable, the party of the second part, or his legal representatives, shall neglect to pay such water rates, tax, or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be, so much additional and further rent, for the above demised premises, due from and payable by the party of the second part: and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due thereon.

And it is expressly understood and agreed by the said party of the second part hereto, for himself and his heirs, executors, administrators, and assigns, that the whole amount of rent reserved, and agreed to be paid for said above demised premises, and each and every installment thereof, shall be and is hereby declared to be a valid and first lien upon any and all buildings and improvements on said premises, or that may at any time be erected, placed, or put on said premises by said party of the second part, or his heirs, executors, and administrators, or assigns, and upon his or their interest in this lease, and the premises hereby demised; and that whenever, and as often as any installment of rent or any other amount above declared to be deemed and taken as rent, shall become due and remain unpaid for one day after the same becomes due and payable, said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, may sell at public auction to the highest bidder for cash, after having first given ten days' notice of the time and place of such sale in some newspaper published in
all the buildings and improvements on said premises, and all the right, title, and interest acquired by said party of the second part, under this lease, to the premises herein described, and as the attorney of the said party of the second part—hereby irrevocably constituted—may make to the purchaser or purchasers thereof, a suitable and proper transfer bill of sale or deed of the same—and out of the proceeds arising from such sale, after first paying all costs and expenses of such sale, including commissions and attorney's fees —retain to himself the whole amount due on said lease up to the date of said sale, rendering the surplus (if any) to said party of the second part, his heirs, executors, administrators, agent, attorney, or assigns, which sale shall be a perpetual bar to and against all rights and equities of said party of the second part, his heirs and assigns in and to the property sold.

And the party of the second part further covenants with the party of the first part, that, at the expiration of the time in this lease mentioned, he will yield up said demised premises to the party of the first part, in as good condition as when the same were entered upon by the party of the second part, loss by fire, or inevitable accident and ordinary wear excepted.

It is further agreed by the party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereunto, nor use or suffer them to be used for any purpose calculated to injure the reputation of the premises, or of the neighborhood, or to impair the value of the surrounding neighborhood property for present use or otherwise.

It is Expressly Understood and Agreed, By and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, executors, administrators, or assigns, it shall and may be lawful for the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the party of the second part or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as of his or their first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case, hereby waives all legal rights which he now has or may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way; meaning and intending hereby to give the party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, as aforesaid, or in any other way, the party of the second part does hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, immediately upon the determination of said term as aforesaid; and if the said party of the second part, or his legal representatives, shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named, he or they shall be deemed guilty of a forcible detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further understood and agreed by the said party of the second part, that neither the right given in this lease, to said party of the first part, to collect the rent that may be due under the terms of this lease by sale, or any proceedings under the same, shall in any way affect the right of said party of the first part to declare this lease void, and the term hereby created ended, as above provided upon default made by said party of the second part.

And the said party of the first part hereby waives his right to any notice from said party of the second part, of his election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein; but the simple fact of the non-payment of the rent reserved shall constitute a forcible entry and detainer as aforesaid.

And said party of the second part further agrees not to remove any buildings or other improvements from said premises, without written consent of said party of the first part, and that the said second party shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture, by the party of the first part.

It is further understood and agreed, That all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators, and assigns of the parties to these presents respectively.

In Testimony Whereof, The said parties have hereunto set their hands and seals, the day and year first above written.

(*Signature of the lessor.*) (*Seal.*)
(*Signature of the lessee.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of

(223.)

An Assignment of Lease, and Ground-Rent.

This Indenture, made the day of in the year of our Lord one thousand nine hundred and between (*name and residence of the assignor*) party of the first part, and (*name and residence of the assignee*) party of the second part, witnesseth, That the said party of the first part, for and in consideration of the sum of dollars, lawful money of the United States of America, unto him in hand well and truly paid by the said party of the second part, at the time of the execution hereof, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, assign, release, and confirm unto the said party of the second part a certain indenture, made and executed on the day of in the year of our Lord nineteen hundred and whereby the said party of the first part leased to one (*name of the lessee in the lease here assigned*) certain premises therein described as follows (*here copy the description of the premises in that lease*) reserving a certain rent, payable to said party of the first part; that is to say (*here state the rent reserved in that* *lease*) payable (*here state the times and terms of payment*) together with the said rent to the said party of the first part, payable as aforesaid.

Together with all right and power of entry and distress and of re-entry, and all other the covenants, ways, means, and remedies for the recovery thereof, and all and singular the rights, incidents, and appurtenances whatsoever, thereunto belonging, and the reversions and remainders thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said party of the first part, or his legal representatives, either in law or equity, as well of, in, and to the said yearly rent or sum hereby granted and assigned, as also of, in, and to the said lot or piece of ground, with the appurtenances, for and out of which the same rent is issuing and payable. To have and to hold, receive and take, all and singular the hereditaments and premises hereby granted and assigned, with the rights, remedies, incidents, and appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of him the said party of the second part, his heirs and assigns forever. And the said party of the first part, and his heirs, all and singular the hereditaments and premises hereby granted and assigned, with the rights, remedies, incidents, and appurtenances, unto the said party of the second part, and his heirs and assigns, against him the said party of the first part and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim, by, from, or under him or them, or any of them, shall and will warrant and forever defend by these presents.

In Witness Whereof, The said parties to these presents have hereunto interchangeably set their hands and seals the day and year hereinbefore first written.

(*Signature of the assignor.*) (*Seal.*)
(*Signature of the assignee.*) (*Seal.*)

Sealed and Delivered in the Presence of us,
(*Witnesses.*)

Received the day of the date of the above indenture of the above-named the sum of being the full consideration money above mentioned.

(*Signature of the assignor.*)

(*Witness.*)

On the day of Anno Domini, 19 , before me, personally appeared the above-named (*name of the assignor*) and in due form of law acknowledged the above indenture to be his free act and deed, and desired the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

(*Signature.*) (*Seal.*)

(224.)

A Lease containing Chattel Mortgage Covenants, to secure the Rent.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and residence of lessor*) of the first part, and (*name and residence of lessee*) of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in the city of in the County of , and in the State of known and described as follows, to wit (*here describe the premises as in Form* 211).

To Have and to Hold The said above-described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the day of in the year of our Lord one thousand nine hundred and for and during and until the day of in the year of our Lord one thousand nine hundred and . And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of dollars, in four equal quarterly payments of dollars each ($), payable (*here state the days when the rent should be paid*) at the house (*or office, or counting-room, or store*) of said party of the first part, in said city of

And it is further agreed by the said party of the second part, in consideration of the leasing of the premises aforesaid, that the said party of the second part shall and will pay, or cause to be paid promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises during the continuance of this lease, and save said premises and the party of the first part harmless from all charges and expenses connected with the supply of water to said premises. And the said party of the second part hereby covenants and agrees, in case of default in the payment of any water-rent levied upon said premises during said term, to pay unto said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

And the said party of the second part further covenants with the said party of the first part, that he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the city, and directions of the proper authorities.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises or any part thereof, or assign this lease, without the written assent of the said party of the first part first had and obtained thereto.

This Indenture Further Witnesseth. That the said party of the second part, for and in consideration of the sum of (*insert the whole sum to be paid under the lease*) dollars, in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey, and confirm unto the said party of the first part, his heirs and assigns, all and singular the following-described goods and chattels, to wit (*here give a schedule or list of the articles, describing them sufficiently*).

Together with all and singular the appurtenances thereunto belonging or in anywise appertaining: to have and to hold the same unto the said party of the first part, his heirs, executors, administrators, and assigns, to his and their sole use forever. And the said party of the second part, for himself and for his heirs, executors, and administrators, does covenant and agree with the said party of the first part and his heirs, executors, administrators, and assigns, that he is lawfully possessed of the said goods and chattels as of his own property; that the same are free from all incumbrances, and that he will, and his heirs, executors, and administrators shall, warrant and defend the same unto the said party of the first part, and his heirs, executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided, Nevertheless, That if the said party of the second part or his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the first part or his heirs, executors, administrators, or assigns, the said sum of dollars, rent, above reserved, punctually, and in the manner and at the times and place above mentioned, then and from thenceforth these presents, and every thing herein contained, shall cease, and be null and void.

And Provided Also, That it shall be lawful for the said party of the second part, his heirs, executors, and administrators, to retain possession of the said granted goods and chattels, and at his own expense to keep and to use and enjoy the same, until the said party of the second part, or his heirs, executors, administrators, or assigns, shall make default in the payment of said rent above specified, at the time or times, and in the manner hereinbefore contained, or unless the said party of the first part shall fear diminution, removal, or waste for want of proper care, or if the said party of the second part shall sell or assign, or attempt to sell or assign said goods and chattels, or any part thereof, or if any writ issued from any court shall be levied on any part of the above-described goods and chattels—that then, and in any of the aforesaid cases, all of said sum of dollars, above reserved as rent for said demised premises, shall become due and payable, and the said party of the first part, his heirs, executors, administrators, and assigns, agents or attorneys, or any of them, may elect to take possession of the said property, and for that purpose may pursue the same or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the second part, with or without force or process of law, wherever the said goods and chattels may be or be supposed to be, and search for the same, and, if found, to take possession of and remove, and sell and dispose of said property, or so much thereof as may be necessary to pay the rent due, and the balance of rent for the whole unexpired term, whether due or not due, at public auction, to the highest bidder, after giving ten days' notice of the time, place, and terms of sale, together with a description of the property to be sold, either by publication in some newspaper in the city of or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said party of the first part, or his heirs, executors, administrators, or assigns, agents or attorneys, or any of them, may elect, and out of the money arising from such sale, to retain, first, all costs and charges for pursuing, searching, taking, removing, keeping, storing, advertising, and selling of such property, goods, chattels, and effects, and all prior liens, together with the rent due, and the balance of rent for the whole unexpired term, whether due or not due, rendering the overplus of the money arising from such sale, and the remainder of said goods and chattels, if any there shall be, unto the said party of the second part, or his legal representatives.

It is Expressly Understood and Agreed, by and between the parties aforesaid, that if the rent above covenanted to be paid, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and that said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby agrees to waive all legal right which he may have to hold or retain any such property, under any exemption-law now in force in this State, or in any other way. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, or his executors, administrators, or assigns, does hereby covenant and agree to surrender and deliver up said above-described premises and property, peaceably, to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same after such default, or after the termination of this lease in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

STATE OF } ss.
COUNTY OF }

I, Justice of the Peace in and for said county, do hereby certify that this lease and mortgage was duly acknowledged before me by the above-named (*name of lessee*) this day of A.D. 18.

(*Seal.*)

(225.)

A Building Lease.

This Deed of Lease, Made and entered into, in duplicate, this day of A.D. 19 , between (*name of lessor*) of County of and State of party of the first part, and (*name of lessee*) of County of and State of party of the second part:

Witnesseth, That the said party of the first part, in consideration of the covenants, agreements, and stipulations hereinafter mentioned, as well as the yearly rent of dollars, to be paid to him in four equal quarterly payments in each year (the first payment to be made on the day of A.D. 19), doth by these presents lease to the said party of the second part for the term of years, which said term begins on the day of 19 , the following-described lot of land, to wit (*here describe the premises as in Form* 211).

The said party of the second part, for himself and his heirs, hereby covenants with said lessor and his heirs to pay said rent as aforesaid, and also to pay all city, county, and State taxes, and all other taxes and demands of every description, nature, or kind whatever, which may from time to time be legally required or demanded of said premises, whether general tax or special tax.

Every failure, first, to pay the said rent, or any part thereof, when it is respectively made payable; or, second, to pay the said city, county, and State taxes, and all other taxes and demands, or any part thereof (legally required or demanded of said premises, within the year the same shall become due, assessed to either said lessor, his heirs or representatives, or to said lessee or his representatives); or, third, to keep and perform any of the other covenants, agreements, or stipulations herein mentioned, shall make and create a forfeiture of this lease, and a termination of the term for which the above premises were let, and all the estate hereby conveyed shall be absolutely void, if so determined, at any day or time however distant, after such failure, by notice in writing to that effect, given by said lessor, his heirs or assigns, to said lessee or his assigns; which said notice may be served by posting a copy or duplicate of the same up at one of the most public places on said premises, or by delivering a copy or duplicate of such notice to said lessee or his assigns.

This lease of said premises, or any part thereof, is not to be assigned, under penalty of forfeiture, without the written consent of said lessor, his heirs or assigns. At the expiration of this lease, the said premises to be delivered to said lessor, his heirs or assigns. The said lessee, and all who hold under him, hereby engage to pay double rent for every day they or any one else in their name shall hold on to the whole or any part of said premises, after the expiration of this lease, or after forfeiture thereof.

The said lessee is, under penalty of forfeiture, bound to keep said premises free from any disorderly, bawdy, or gambling establishments, dram-shops, tippling-shops, beer-houses, or any nuisances whatsoever. And in case of any forfeiture of this lease, the said lessor, his heirs and assigns, may forthwith take possession of said premises, with all the improvements thereon, and shall be entitled to the same, any custom, usage, or law to the contrary notwithstanding.

All improvements erected on said premises by said lessee or his assigns, or by any one who may claim under them, are bound for the payment of each quarterly installment of rent, and for the city, county, and State taxes, and all other taxes and demands as aforesaid, and for any arrears of rent or taxes; and in case of the punctual payment of the rent and taxes, as herein specified, the said lessee or his assigns is hereby authorized to remove all such improvements (and no others), at the expiration of this lease, which he or any one who may claim under him, may have erected on said premises during said term.

In Testimony Whereof, The parties hereto have hereunto set their hands and seals to duplicate leases the day and year aforesaid.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

In Presence of

(226.)

A Mining Lease.

This Indenture, Made this day of in the year of our Lord one thousand nine hundred and between (*name and residence of the lessor*) of the first part, and (*name and residence of the lessee*) of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, and of one dollar in hand paid to the said party of the first part, the receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey to the said party of the second part, his heirs, executors, administrators, and assigns, the right of entering in and upon the lands hereinafter described, for the purpose of searching for mineral and fossil substances, and of conducting mining and quarrying operations, to any extent he or they may deem advisable (but not to hold possession of any part of said lands for any other purpose whatsoever) paying for the site of buildings of any kind, necessary thereto, a reasonable rent.

The said lands are situated (*here state the situation of the premises leased, and describe them by metes and bounds, dimensions, and references to other boundaries, so as to distinguish them perfectly.*)

And the said party of the second part hereby agree that he or his heirs, executors, administrators, or assigns, will pay or cause to be paid to the said party of the first part, his heirs or assigns, an annual rent of the amount of dollars, in four equal quarterly payments, payable severally on the following days (*here state the days when the payments are to be made, or whatever other terms or times are agreed upon*) and also covenants that no damage shall be done to or upon said lands and premises, other than may be necessary in conducting said operations. And it is agreed and covenanted by and between the parties hereunto, that this lease shall be and remain in full force and effect (subject to the proviso hereinafter stated) years from the date hereof, and no longer. But the said parties of the first and the second part, each for themselves, their heirs, executors, administrators, and assigns, covenant and agree, and this indenture is made with this express proviso, that if no mineral or fossil substance be mined or quarried, as now contemplated by said parties, within the period of years from the present time, then these presents, and everything contained herein, shall cease and be forever null and void.

In Testimony Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of,

(227.)

A Lease of Land supposed to contain Oil, Salt, or other Minerals.

Articles of Agreement, Made and concluded this day of A.D. 19 between (*name of lessor*) of the township of County of and State of party of the first part, and (*name and residence of the lessee*) party of the second part. **Witnesseth.**

That the said party of the first part, for himself and his heirs, executors, administrators, and assigns, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and for the further consideration hereinafter mentioned, and on account of covenants hereinafter contained, hereby leases to the said party of the second part, his heirs, executors, administrators, and assigns, the following-described piece or parcel of land, situated in the township of County of and State of bounded and described as follows (*describe the premises as in the preceding Form*). The said land more fully described in deed of conveyance by (*name of the grantor to the lessor*) to the said party of the first part, containing acres, more or less, for the purpose of boring, mining, and operating for oil, salt, and other minerals on said land, for the term of years.

Said second parties to have the exclusive right to mine for oil, salt, and other minerals, on said land, during the continuance of said term; to have the privilege of taking sufficient coal and wood for conducting said boring and mining operations, and timber for derricks and mill-frames and for refineries, and the right to erect all necessary buildings upon said premises for carrying on the business of boring for oil, and mining, refining, and storing away oil and other minerals; and to have the necessary roads to and from any well or wells that may be bored, or any mines; and to have possession whenever they shall be ready to commence operations. And in case successful in obtaining oil or other minerals, agree to deliver to the said party of the first part (*here state the part or proportion which is to be given to the lessor*) of all oil, salt, or other minerals obtained. Said party of the first part to find his own barrels, and remove the oil and other minerals belonging to him, as often as required by the second parties. And in case said second parties should not be successful in obtaining oil or other minerals, they shall have the right to remove all engines, tools, machinery, and buildings. And further, it is agreed that said second parties have the right to sub-lease said land for the purpose of boring for oil or other minerals; the said lessee or lessees being granted all the rights and privileges herein granted to the said party of the second part.

Witness our hands and seals this day of , 19

(*Signature of lessor.*) (*Seal.*)
(*Signature of lessee.*) (*Seal.*)

Witnesses.

Personally appeared before me, a Justice of the Peace in and for the township of within the County aforesaid and did acknowledge the signing and sealing of the above agreement to be act and deed.

Given under my hand this day of 19

Justice of the Peace.

(228.)

An Assignment of a Lease.

Know all Men by these Presents, That I (*name and residence of assignor*) for and in consideration of the sum of dollars, lawful money of the United States, to me duly paid, by (*name and residence of assignee*) have sold, and by these presents do grant, convey, assign, transfer and set over, unto the said (*name of assignee*) a certain indenture of lease, bearing date the day of in the year one thousand nine hundred and made by (*name of the lessor in the lease assigned*) whereby he leases to me the following-described premises (*here describe the premises briefly*), with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances.

To Have and to Hold the same unto the said (*the name of the assignee*) and his assigns, from the day of for and during all the rest, residue, and remainder yet to come of and in the term of years mentioned in the said indenture of lease, and all my rights and privileges in and under said lease; subject nevertheless to the rents, covenants, conditions, and provisions therein also mentioned. And I do hereby covenant, grant, promise, and agree to and with the said (*name of the assignee*) that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

In Witness Whereof, I have hereunto set my hand and seal this day of one thousand nine hundred and

(*Signature.*) (*Seal.*)

Sealed and Delivered in the Presence of

(229.)

Landlord's Notice to Quit for Non-Payment of Rent—Short Form.

STATE OF ss. A D. 19

To (*name of tenant*). You being in possession of the following-described premises, which you occupy as my tenant (*here describe the premises sufficiently to identify them*) in the city (*or township*) of and county aforesaid, are hereby notified to quit and deliver up to me the premises aforesaid, in fourteen days from this date, according to law, your rent being due and unpaid. Hereof fail not, or I shall take a due course of law to eject you from the same.

Witness.

(*Signature.*)

(230.)

Landlord's Notice to Quit for Non-Payment of Rent—another Form.

STATE OF CITY OF (*date*) 19

You are hereby notified to quit the premises situate (*state the situation of the premises, giving township or city, and street and number*) which I have leased to you, reserving rent, or pay and satisfy the rent due and in arrear, being $ which amount was due on the day of 18 and is hereby demanded (you having neglected or refused to pay the amount so reserved, as often as the same has grown due, according to the terms of our contract, and there being no goods on the premises adequate to pay the rent so reserved, except such articles as are exempt from levy and sale by the laws of this State) within days from the date hereof, or I shall proceed against you as the law directs.

Yours, etc.

(*Signature.*)

To (*name of tenant.*)

(231.)

Landlord's Notice to pay Rent due, or Quit.

STATE OF }
COUNTY OF } ss.

(*Name of landlord*) landlord, against (*name of tenant*) tenant.

Take Notice, That you are justly indebted unto me in the sum of for rent of (*home, store, or other premises, describing them generally*) from (*date when the rent was due and payable*), which you are required to pay on or before the expiration of three days from the day of the service of this notice, or surrender up the possession of the said premises to in default of which shall proceed under the provisions of law to recover the possession thereof.

Dated this day of , 19

(*Name of the landlord*) Landlord.

To (*name of the tenant*) Tenant, in possession of the premises above specified.

(232.)

Landlord's Notice to leave at End of the Term.

To (*name and address of the tenant.*)

SIR,—Being in the possession of a certain messuage or tenement, with the appurtenances, situate (*describe the premises briefly*) which said premises were demised to you by me for a certain term, to wit, from the day of A.D. 19 until the day of A.D. 18 , and which said term will terminate and expire on the day and year last aforesaid, I hereby give you notice, that it is my desire to have again and re-possess the said messuage or tenement, with the appurtenances, and I therefore do hereby require you to leave the same upon the expiration of the said hereinbefore mentioned term.

Witness my hand this day of city of A.D. 18 .

(*Signature.*)

(*Witness.*)

(233.)

Landlord's Notice to Determine a Tenancy at Will.

STATE OF ss. A.D. 19

To (*name of tenant*). You being in possession of the following-described premises, which you occupy as my tenant at will (*describing them sufficiently to identify them*) in the (*city and street*) aforesaid, are hereby notified to quit and deliver up to me the premises aforesaid (*on such a day, stating here the day as far distant as is made necessary by the requisite length of notice*) according to law, it being my intention to determine your tenancy at will. Hereof fail not, or I shall take a due course of law to eject you from the same.

(*Witness.*) (*Signature.*)

(234.)

Receipt for Rent, in use in New York.

Rent payable

The tenant mentioned below hereby agrees to pay the rent of the premises occupied and used by on the first day of the term ; and engages to clean the entries, stairs, stoops, and privy thereof, weekly, in turn with other occupants, and not incumber the same with furniture, fuel, or rubbish, nor keep any hog, dog, or fowl, nor deposit ashes or garbage on said premises, nor in the sinks or privies, nor split wood on the hearth, floor, or yard.

NEW YORK, 19

Received from (*name of tenant paying*) dollars, for month's rent, from 19 to 19 for (*stone, brick, or other*) house, No Street, in the city of New York.

$

(235.)

Lease in use in the Province of Quebec.

On this day, the of in the year of our Lord one thousand nine hundred and before the undersigned Public Notar , duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said Province, appeared (*name, residence, and occupation of the lessor*) who declared to have let and leased, and by these presents do let and lease, and promise to procure peaceable enjoyment unto (*name, residence, and occupation of lessee*) present and accepting lessee for for, during, and until the full end and term of to be accounted and reckoned on and from the day of the month of in the year (*insert a description of the premises leased, as directed in Form* 211). With the whole the said lessee content and satisfied, having seen and viewed the same.

The present lease is thus made for and in consideration of the sum of current money of the said Province of Canada, per during the said term, which the said lessee do hereby covenant, promise, and agree, and bind and oblige to well and truly pay, or cause to be paid, to the said lessor or legal representatives, in and by even and equal payments of each; the first payment whereof to become due and payable on the day of now next ensuing, and thus to continue as aforesaid during all the said term; and, in further consideration, that the said lessee shall and do hereby promise and agree, and bind and oblige to pay the railway tax, the park tax, the school tax, the water tax, the yearly assessments of said leased premises, and every other tax, charge, and burden which may be imposed or levied thereon, during the said term; and, further, that the said lessee shall furnish the said leased premises with a sufficient quantity of household furniture or goods to secure the payment of the said rent, keep the premises in repairs (*réparations locatives*), during the said term, and deliver the same at the expiration of the present lease in as good order, state, and condition as the same may be found in at the commencement of the same, reasonable tear and wear and accidents by fire excepted.

It is expressly agreed by and between the said parties that the said lessee shall not transfer right in the present lease, or sublet any part or portion of the above rented premises, without the consent, in writing, of the said lessor or representatives.

The said lessee shall not make any alteration in the said leased premises without the consent of the said lessor or representatives; and, in case any such alterations should be made, then the said lessee shall be bound to put the said leased premises in the same state in which they were at the commencement of the present lease, unless the said lessor prefer that the said alterations should remain, without any compensation being allowed to the said lessee for such alteration.

Should any *grosses réparations* be deemed necessary in the said leased premises, the said lessee shall permit the same to be performed, without pretending or demanding any reduction in the said rent, damages, interest, or compensation; provided always, that the said repairs be indispensable, and be finished within a reasonable time.

The said lessee shall, during the said term, conform to the rules and regulations of police, and pay the sweeping of the chimneys of said leased premises during the said term. The said lessee shall, during the last three months of the present lease, allow such person or persons as may be desirous of obtaining a lease of the said premises to visit the same, and will suffer handbills for that purpose to be placarded and left on the said premises.

The said lessee shall pay all extra premium of assurance that the company, at which the premises now leased may be insured, shall exact in consequence of the business or works done and carried on therein by the said lessee.

And for the execution hereof the said parties to these presents have elected domiciles; to wit, the said lessee at and upon the premises now leased, and the said lessor at place of residence above described, where, &c.

Done and Passed at the said city of Montreal, in the office of the said notar , under the number thousand hundred and on the day, month, and year first above and before written, and signed by the said with and in the presence of said notar , these presents having been first duly read to the said parties by said notar .

(*Signatures.*) (*Seals.*)

(236.)

Lease in use in the Province of Quebec, known as "Private Lease."

This Indenture of Lease, Made between (*name, residence, and occupation of lessor*), of the first part, and (*name, residence, and occupation of lessee*) of the second part,

Witnesseth, That the said do hereby lease for the term of year , from the unto the said hereby present and accepting for that is to say (*here describe the premises leased with sufficient distinctness*) the said leased premises being well known to the said lessee having seen and examined the same before the execution of these presents, and with the said leased premises content and satisfied. This lease is thus made subject to the following stipulations: viz., that the lessee shall make all repairs customarily made by tenants, during the present lease, and at the termination thereof shall peaceably surrender the said premises in the like condition as when taken possession of, reasonable tear and wear being allowed; that shall constantly keep the hereby leased premises furnished according to law for the security of the rent hereinafter stipulated; that shall not make over interest in the present lease, or sublet the whole or any part of the premises hereby leased, without the consent of the lessor being first obtained in writing for that purpose.

The said lessee promise to pay the yearly taxes or assessments for and during the said term, at whatever rate or amount or for whatever purpose the same may be levied, school tax and all other taxes and assessments, and perform all the requirements of the police and fire departments, to the perfect exoneration of the lessor ; and during the last three months of the present lease shall allow such person or persons as may be desirous of obtaining a lease of the said premises, to visit the same at seasonable hours; and shall also permit notices of such intended lease to be put up on th premises.

The lessee shall also pay any and all extra premiums levied in consequence of the business that may be carried on by

It is especially and distinctly understood and agreed by and between the parties. that the furniture, goods, chattels, and effects of every kind and description belonging to the lessee shall be security for the payment of the rent for the entire term, and shall not be removed from the said leased premises until the rent for the whole term be paid, even if not due, any law, usage, or custom to the contrary notwithstanding, for without this condition the present lease would not have been made : nothing herein contained to be deemed or construed as comminatory or evasive, but of rigor.

This lease is further made in consideration of the sum of current money of this Province, which the said lessee bind and oblige to well and truly pay to the said lessor or lawful representatives, in equal payments of the first payment whereof to be due and payable on the next.

Signed in duplicate, at Montreal, this day of in the year of our Lord one thousand nine hundred and in the presence of

(*Signatures.*) (*Seals.*)

(237.)

Lease of Land in use in Ontario and Other Provinces.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and , between (*name, residence, and occupation of the lessor*), the party of the first part, and (*name, residence, and occupation of lessee*) the party of the second part,

Witnesseth, That in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and to be paid, observed, and performed by the said part of the second part, executors, administrators, and assigns, the said part of the first part ha demised and leased, and by these presents do demise and lease, unto the said part of the second part executors, administrators, and assigns, all th certain parcel or tract of land and premises situate, lying, and being (*describe premises leased with sufficient distinctness to identify them perfectly*).

To Have and to Hold the said parcel or tract of land, with the appurtenances, unto the said part of the second part executors, administrators, and assigns, from the day of one thousand eight hundred and for the term of from thence next ensuing, and fully to be completed and ended, yielding and paying therefor unto the said part of the first part executors, administrators, and assigns, the yearly rent or sum of of lawful money of Canada, by equal payments, on the in each and every year during the said term, the first payment to be made on the day of next ensuing the date hereof.

And the said part of the second part doth hereby for heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said part of the first part, heirs, executors, administrators, and assigns, that the said part of the second part executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, to the said part of the first part, executors, administrators, or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout, for, or in respect of, any rates, taxes, and impositions, assessment, or otherwise; and will, during said term, discharge and pay all rates, taxes, assessments, and impositions now payable or hereafter to become payable in respect of said premises; and also shall and will perform all statute labor in respect of said premises, during the whole of the term hereby granted.

Provided always, and it is hereby agreed by and between the said parties hereto, that if, at any time or times during the said term, the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid as aforesaid, then it shall be lawful for the said part of the first part, heirs, executors, administrators, or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the said premises to have again, repossess, and enjoy, as if these presents had never been executed, without the let, hindrance, or denial of the said part of the second part, heirs, executors, administrators, or assigns; and, further, that the non-fulfilment of the covenants hereinbefore mentioned, or any of them, on the part of the lessee or lessees, shall operate as a forfeiture of these presents, and the same shall be considered null and void to all intents and purposes whatsoever; and also, that the said part of the second part, executors, administrators, and assigns, shall not nor will, during the said term, grant or demise, or assign, transfer, or set over, or otherwise, by any act or deed, procure or cause the said premises hereby demised or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, transferred, underlet, or set over unto any person or persons whomsoever, nor carry on any offensive trade or business on the premises, without the consent in writing, of the said part of the first part, heirs or assigns, first had and obtained.

And the said part of the second part do hereby for heirs, executors, administrators, and assigns, covenant, promise, and agree, with and to the said part of the first part, heirs, executors, administrators, or assigns, that the said part of the second part, heirs, executors, administrators, or assigns, will, at the end of the term hereby granted, peaceably and quietly surrender and deliver up possession of the said premises hereby demised to the said part of the first part heirs, executors, administrators, or assigns.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (***Seals.***)

Signed, Sealed, and Delivered in the Presence of

(238.)

Short House Lease in Use in Ontario and other Provinces.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and in pursuance of the act respecting short forms of leases between (*name, residence, and occupation of the lessor*) hereinafter called the lessor of the first part, and (*name, residence, and occupation of the lessee*) hereinafter called the lessee of the second part,

Witnesseth, That in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the said lessee executors, administrators, and assigns, to be paid, observed, and performed, he the said lessor ha demised and leased, and by these presents do demise and lease unto the said lessee, executors, administrators, and assigns, all th certain (*describe the premises leased with sufficient minuteness to define them perfectly*).

Together with all the rights, members, and appurtenances whatsoever to the said premises belonging or appertaining.

To Have and to Hold the said demised premises, with their appurtenances, unto the said lessee, executors, administrators, and assigns, for and during the term of to be computed from the day of one thousand eight hundred and and from thenceforth next ensuing, and fully to be completed and ended, yielding and paying therefor yearly and every year, during the said term hereby granted unto the said lessor, heirs, executors, administrators, or assigns, the sum of dollars of lawful money of Canada, to be payable on the following days and times ; that is to say, on the days of and in each year during the said term, the first of such payments to become due, and be made, on the day of next, and the last of such payments to be made in advance, on the day of payment of rent preceding the expiration of the said term.

And the said lessee covenant with the said lessor to pay rent, and to pay taxes, and to repair (reasonable wear and tear, and accidents by fire or tempest excepted), and to keep up fences, and not to cut down timber ; and that the said lessor may enter and view the said repair ; and that the said lessee will repair according to notice, and will not assign or sublet without leave, and will not carry on any business that shall be deemed a nuisance on said premises; and that he will leave the premises in good repair. (*If there are any other agreements between the parties, they should be inserted here.*)

And also, that if the term hereby granted shall be at any time seized, or taken in execution, or in attachment, by any creditor of the said lessee, or if the said lessee shall make any assignment for the benefit of creditors, or, becoming bankrupt or insolvent, shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the said term shall immediately become forfeited and void, and the full amount of the current rent shall be at once due and payable; and also, that if the said premises be destroyed, or so much injured as to become unfit for occupation, by fire or other casualty, not caused by the wilful default or neglect of the said lessee, his executors, administrators, or assigns, the said term hereby demised shall cease, and the current rent shall be fully apportioned, and the due proportionate part thereof shall be at once due and payable.

Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants, or seizure or forfeiture of the said term for any of the causes aforesaid; the said lessor covenant with the said lessee for quiet enjoyment.

In Witness Whereof, The said parties to these presents have hereunto set their hands and seals.

Signed, Sealed, and Delivered in the Presence of

(239.)

Lease of Land in use Generally in the British Provinces.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and between (*name, residence, and occupation of the lessor*) of the one part, and (*name, residence, and occupation of the lessee*) of the other part,

Witnesseth, That for and in consideration of the rents, covenants, agreements, and provisos hereinafter reserved and contained, and which by and on the part and behalf of the said executors, administrators, and assigns, are to be paid, kept, done, and performed, he the said ha granted, demised, leased, set, and to farm letten, and by these presents do grant, demise, lease, set, and to farm let, unto the said executors, administrators, and assigns, all that tract, piece, or parcel of land situate, lying, and being on lot or township number in the County of and the Province of bounded and described as follows; that is to say (*here describe the premises leased*) containing, by estimation, acres, be the same a little more or less, together with all buildings, woods, underwoods, ways, waters, watercourses, profits, commodities, privileges, advantages, and appurtenances whatsoever to the said premises belonging, or in anywise appertaining.

To Have and to Hold the said tract, piece, or parcel of land, and premises hereby demised, with their appurtenances, unto the said executors, administrators, and assigns, from the day of for and during and until the full end and term of years from thence next ensuing, and fully to be complete and ended; subject, nevertheless, to the quit-rents to become due, exceptions, reservations, covenants, easements, and conditions in the original grant or letters-patent of the said reserved and contained. Yielding and paying therefor yearly, and in every year during the said term hereby granted, unto the said heirs or assigns, the clear yearly rent or sum of without making any deduction or abatement whatever for or in respect of any present or future quit-rents, land taxes, or other parliamentary, legislative, colonial, or parochial taxes, assessments, payments, or impositions whatsoever, by yearly payments; that is to say, on the day of in every year, the first payment to become due and be paid on day of . And the said do for heirs, executors, and administrators, covenant, promise, and agree to and with the said heirs and assigns, in manner following: that is to say, that the said executors, administrators, and assigns, shall and will, from time to time, and at all times during the continuance of the term hereby granted, well and truly pay, or cause to be paid, unto the said heirs and assigns, the said yearly rent hereby reserved, upon the days and times, and in the manner hereinbefore mentioned for the payment of the same, according to the true intent and meaning of these presents. And also, the said executors, administrators, and assigns, shall and will pay, satisfy, and discharge, or cause to be paid, satisfied, and discharged, all and all manner of quit-rents, land taxes, and other parliamentary, legislative, or parochial taxes, rates, assessments, payments, or impositions whatsoever, now or at any time hereafter during the said term hereby demised, payable, or to become payable, for or in respect of the said premises, or any part of them, or the said yearly rent or any part thereof.

Provided always, nevertheless, and these presents are upon this express condition, that if the said yearly rent hereinbefore reserved, or any part thereof, shall be in arrear for the space of after the same ought to have been paid as aforesaid (although no legal or formal demand shall have been made for the same), that then, and in every such case, and at all times hereafter, it shall and may be lawful to and for the said heirs and assigns, either to sue or distrain for the same, or into or upon the said demised premises, or into any part thereof, in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in former state; and the said and other occupiers and possessors thereof, thereout and from thence utterly to expel, put out, and remove, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said for heirs and assigns, do hereby covenant, promise, and agree to and with the said executors, administrators, and assigns, that paying the said yearly rent hereby reserved, and performing the covenants and agreements hereinbefore mentioned and contained, and which on part and behalf are or ought to be paid, done, and performed (subject, nevertheless, as aforesaid), shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said hereby demised premises, with the appurtenances, for all the term hereby granted, without the lawful let, suit, trouble, denial, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said heirs or assigns, or of, from, or by any other person or persons lawfully claiming or to claim the said hereby demised premises, or any part or parcel thereof.

In Witness Whereof, I, the said (*name of lessor*), have hereunto subscribed my name and affixed my seal, at on the day of in the year of our Lord

(*Name of grantor.*) (*Seal.*)

Executed and Delivered in the Presence of

CHAPTER XXXII.

MORTGAGES OF GOODS AND CHATTELS, OR PERSONAL PROPERTY.

MORTGAGES are now often made of personal property. Any instrument will answer the purpose, which would suffice as a bill of sale of the property, and which contains, in addition to the words of sale and transfer, a clause providing for the avoidance of it when the debt is paid. I append to this chapter forms for this purpose. When the mortgagor of personal property retained possession, it was formerly doubtful what security the mortgagee had. Now, however, it is generally provided by statute, that the mortgagor may retain possession, if the mortgage be recorded.

These instruments should always be recorded according to the provisions of the statute of the State in which they are made; although the general rule would apply to them, that they would operate without record as to all parties having notice or knowledge of them. The statutes respecting mortgages of personal property always provide for an equity of redemption, which is usually very much shorter than that of land. A frequent period is sixty days. The requirements of the statute in respect to notice, foreclosure, etc., must be strictly followed.

It used to be thought that a personal mortgage might be made to cover property subsequently acquired by the mortgagor. Thus, a dealer in dry goods would mortgage all his stock to secure some creditor, and provide in the mortgage that it should operate upon all his goods and merchandise subsequently acquired by him. But it has been held that such a clause has no effect; because no man can make a mortgage of property which he does not own at the time. We give annexed to this chapter the laws of all the States relating to mortgages of personal property.

THE PLEDGE OF PERSONAL PROPERTY.

A PLEDGEE is bound to take ordinary (not extreme) care of the thing pledged; and, if it be lost or injured for want of such care, he is answerable. He cannot use it, except at his own peril; that is, he is liable for any injury caused by using it, even if it was not his fault. If the thing—as a horse—needs use for its own safety, then the pledgee may use it for this purpose, and is liable only for an injury caused by his negligence. He must account with the pledgor for the income, increase, or profits.

One difference between a mortgagee and a pledgee is this: A mortgagee need not take possession, for the mortgagor may retain it, and now this is provided for, as we have seen, by recording the mortgage. But if a thing is given in pledge, the pledgee must have and keep possession of it.

The most important difference is this. A mortgagee may sell and transfer his mortgage, and his transferee may transfer it again, and so on; and when the debt is paid, the mortgagor reclaims it from whomsoever has it then. But if a pledgee sells the pledge before the debt is due, it is held that he is at once answerable to the pledgor for its full value, although the debt be not paid.

Some cases of this kind have been carried very far in New York. It is held there,—and on grounds which may perhaps suffice to make it law everywhere,—that if A lends money to B, and takes stocks in pledge, A cannot sell these stocks and keep the proceeds, and replace the stock and return it when the debt is paid. He can do nothing but keep the stock; and if he sells it, the pledgor may recover at once its full value, and the pledgee will have no security for his debt. In such a case, a pledgee, being sued, offered the testimony of brokers and others to prove a uniform and established usage in the city of New York thus to sell or use pledged stock until the debt was paid; but the court said the usage was illegal, and refused to receive the evidence.

It is certain that after the debt is due and payable, and after demand if it be payable on demand, the pledgee may have a decree in chancery for a sale of the pledge, or may sell it himself: *provided* he first gives a reasonable notice to the pledgor, and then sells it, after a reasonable delay, in a proper manner, by a public sale at auction; and uses all reasonable precautions to get its value, as by advertisement, etc.; and does not buy it himself, directly or indirectly; and conducts himself in all respects honestly; and then he must account for the proceeds.

Sometimes the parties agree, when the pledge is given, or afterwards, how the pledge shall be treated, or how sold if not redeemed, etc.; and such agreements, if fair and reasonable, would undoubtedly be binding on both parties.

It is agreed that negotiable paper is excepted from the common rule; and the pledgee of that may sell or discount it before the debt is due; and must account for it, or its proceeds, if the debt is paid and the paper redeemed, or for the balance if he applies it to payment of the debt.

A *loan* of stock is not like a *pledge* of stock, because it authorizes the borrower to sell or pledge it, or use it in any way, at any time; but he must replace and return the same quantity of the same stock, when it is called for. If he could not thus make use of the stock, the loan of it would be of no benefit whatever to the borrower. But he cannot thus use stock pledged to him, unless by a special agreement which permits this use.

A pledgee, who receives a pledge to secure one or more specific debts, cannot retain it to secure other and further debts of the pledgor, unless with his consent. This consent may be express, or implied from words or circumstances which show that such was the understanding of the parties.

(240.)

A Mortgage of Personal Property.

Know all Men by these Presents, That I (*name of mortgagor*) of the town of County of and State of for and in consideration of dollars, to me in hand paid by (*name of mortgagee*) of the town of County of and State aforesaid, do sell and convey to the said (*name of mortgagee*) the following goods and chattels, to wit (*list or schedule of the articles, specifying them with sufficient distinctness to make it certain what they are*) warranted free of incumbrance, and against any adverse claims: Upon condition, that if the said (*name of the mortgagor*) pay to the said (*name of the mortgagee*) dollars and interest, in year , agreeably to a promissory note of this date, for that sum, payable to the said (*name of mortgagee*) or order, on demand, with interest, this deed shall be void, otherwise in full force and effect.

The aforesaid Parties Agree, That, until the condition of this instrument is broken, the said property may remain in possession of the said (*name of mortgagor*), but after condition broken the said (*name of mortgagee*) may at his pleasure take and remove the same, and may enter into any building or premises of the said (*name of the mortgagor*) for that purpose.

Witness our hands and seals this day of A.D.

(*Signature of mortgagor.*) (*Seal.*)
(*Signature of mortgagee.*) (*Seal.*)

Sealed and Delivered in the Presence of

STATE OF } ss.
COUNTY OF }

Be it Remembered, That on this day of nineteen hundred and before me, the undersigned, Notary Public in and for said County and State, duly commissioned and qualified, came who is known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as party thereto, and he acknowledged the same to be his act and deed, for the purpose therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at office, in the city of the day and year last aforesaid.

Notary Public.

(241.)

A Mortgage of Personal Property, with Warranty.

Know all Men by these Presents, That I, (*name and residence of mortgagor*) in consideration of the sum of to me in hand paid by (*name and residence of mortgagee*) the receipt whereof is hereby acknowl edged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (*name of mortgagee*) the following articles of personal property; that is to say (*list or schedule as in Form* 240).

To Have and to Hold all and singular, the said goods and chattels, unto the said (*name of the mortgagee*) and his executors, administrators, and assigns, to his and their use forever. And I the said mortgagor, for myself and for my executors and administrators, do covenant to and with the said mortgagee, and with his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property; that the same are free from all incumbrances, and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee, his executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided Nevertheless, That if the said mortgagor, his executors or administrators, shall well and truly pay unto the said mortgagee, his executors, administrators, or assigns, the sum of dollars, in months from the date hereof (*or on a certain day, stating the day when the money is to be paid*) with interest at per cent., then this deed, as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void; otherwise shall remain in full force and virtue.

And Provided Also, That until default by the said mortgagor, or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached, at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, or his executors or administrators, shall attempt to sell the same, or any part thereof, without notice to the said mortgagee, or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed, or shall remove the same, or any part thereof, from the place in which they now are, without such notice and assent, then it shall be lawful for the said mortgagee, or his executors, administrators, or assigns, to take immediate possession of the whole of said granted property, to his and their own use.

In Testimony Whereof, I have hereunto set my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Executed and Delivered in the Presence of

(242.)

A Mortgage of Personal Property, with a Power of Sale.

Know all Men by these Presents, That I, (*name of mortgagor*) of the town (*or city*) of in the County of and State of , in consideration of dollars, to me paid by (*name of mortgagee*) of the town (*or city*) of in the County of and State of the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell unto the said (*name of mortgagee*) and his assigns, forever, the following goods and chattels, to wit (*list or schedule, as in Form* 240).

To Have and to Hold, All and singular the said goods and chattels unto the mortgagee herein, and his assigns, to their sole use and behoof forever. And the mortgagor herein, for himself and for his heirs, executors, and administrators, does hereby covenant to and with the said mortgagee and his assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances, and that he will warrant and defend the same to him the said mortgagee and his assigns, against the lawful claims and demands of all persons.

Provided, Nevertheless, that if the said mortgagor shall pay to the mortgagee, on the day of in the year the sum of dollars, then this mortgage is to be void, otherwise to remain in full force and effect.

And Provided Further, That until default be made by the said mortgagor in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or the said mortgagor, or any person or persons whatever, upon any pretence, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same or any part thereof, without the authority and permission of the said mortgagee or his executors, administrators, or assigns, in writing expressed, then it shall and may be lawful for the said mortgagee, with or without assistance, or his agent or attorney, or his executors, administrators, or assigns, to take possession of said goods and chattels, by entering upon any premises wherever the same may be, whether in this county or State, or elsewhere, to and for the use of said mortgagee or his assigns. And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done or performed at the time and according to the conditions above set forth, then the said mortgagee, or his attorney or agent, or his executors, administrators, or assigns, may by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale, and after satisfying the amount due, and all expenses, the surplus, if any remain, shall be paid over to said mortgagor or his assigns. The exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted, and appointed agent and attorney to do whatever is above authorized.

In Witness Whereof, The said mortgagor has hereunto set his hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature of mortgagor.*) (*Seal.*)

Signed, Sealed, and Delivered in the presence of

STATE OF
COUNTY. } SS.

This mortgage was acknowledged before me, by (*the mortgagor*), this day of A.D. 19

(243.)

Mortgage of Personal Property, with Power of Sale—another Form.

Know all Men by these Presents, That I (*name and residence of mortgagor*) in consideration of the sum of to me paid by (*name and residence of mortgagee*) the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said (*name of mortgagee*) the following named and described articles of personal property: that is to say (*here follows the list or schedule and description of the articles mortgaged, as in Form* 240).

To Have and to Hold, All and singular, the said goods and chattels, unto the said (*name of mortgagee*) and his executors, administrators, and assigns, to his and their sole use forever. And I, the said mortgagor, for myself and my executors and administrators, do covenant to and with the said mortgagee and his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property: that the same are free from all incumbrances; and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee and his executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided Nevertheless, That if the said mortgagor, or his executors or administrators, shall well and truly pay unto the said mortgagee, or his executors, administrators, or assigns, the sum of then this deed, as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void, and otherwise they shall remain in full force and virtue.

And Provided Also, That until default by the said mortgagor or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, his executors or administrators, shall attempt to sell the same or any part thereof without notice to the said mortgagee or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed; or shall remove the same, or any part thereof, from the place where they now are, without such notice and assent, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to take immediate possession of the whole of said granted property to his or their own use, and to sell and dispose of the whole, or of so much of said granted property at public auction, as shall produce a sum of money sufficient to pay and discharge the above-mentioned debt or liability, with interest, and all costs and charges of keeping and selling the same, and all just and equitable liens then existing thereon, without further notice or demand, except giving day's notice of the time and place of said sale to said mortgagor or his legal representatives; and after the said debt or liability, with interest, costs, charges, and liens, shall be so discharged and satisfied, the surplus of the money arising from said sale and the residue of said granted property, shall be paid and restored to said mortgagor or his legal representatives, discharged from all claim under this mortgage.

In Testimony Whereof, I the said (*name of mortgagor*) have hereunto set my hand and seal this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

ABSTRACT OF THE LAWS OF THE STATES AND TERRITORIES CONCERNING CHATTEL MORTGAGES.

ALABAMA.— Personal property may be mortgaged, but to be good against creditors and purchasers without notice, the mortgage must be recorded in the county where the grantor lives, and also in the county where the property is at the time of conveyance. If removed to another county, the mortgage must be recorded there within three months. Mortgages of personal property usually contain powers of sale, and are foreclosed according to the provisions of the mortgage.

ARIZONA. — All personal property may be mortgaged. The mortgage must set forth the residences of the mortgagor and mortgagee, the sum to be secured, the rate of interest to be paid, and when and where payable, and both parties must make affidavit that the mortgage is *bona fide*, and not made to defraud or delay creditors. The mortgage, with the affidavit annexed, must be recorded in the county where the mortgagor lives, and also where the property is situated. Foreclosure by notice and sale. Notice must be served on mortgagor, subsequent purchasers and persons having recorded liens, posted in three public places in the county for ten days, and published once in a newspaper in the county.

ARKANSAS.—Chattel mortgages must be acknowledged before some person authorized by law to take acknowledgments, and filed or recorded in the county where the mortgagor resides, and are liens on the property mortgaged only from such time. If filed without being recorded, the lien expires in one year, unless within thirty days before the expiration of the year the mortgagor files an affidavit showing his interest in the mortgaged property and the amount due. After condition broken, suit may be brought on the mortgage, and judgment rendered for the sale of the property and the recovery of the debt against the defendant personally. If the property does not bring two-thirds of the appraised value, the sale may be postponed for sixty days, unless the right of appraisal is expressly waived in the mortgage.

CALIFORNIA.—The following property may be mortgaged: Locomotives and rolling stock of a railroad company, steamboat machinery, and machinery used by machinists, foundrymen, and mechanics, vessels of more than five tons burden, pianos and organs, steam engines and boilers, mining machinery, printing presses and materials, professional libraries, instruments of surgeons, physicians, surveyors, and dentists, and the instruments, negatives, and fixtures of photograph galleries, upholstery and furniture and household goods, oil paintings, pictures, and works of art, growing crops, wine, fruit brandy, fruit syrup, or sugar and apparatus used in the manufacture or storage of the same; iron and steel safes, cattle, horses, mules, swine, and sheep, harvesters' threshing outfits, hay presses, and farming implements; abstract systems, books and papers of searchers of records, raisins and dried fruits cured or in process, boxes, fruit graders, drying trays, and fruit ladders. The mortgage is void against creditors, unless accompanied by an affidavit of all the parties that it is made in good faith and without any design to defraud creditors, and unless it is acknowledged and recorded in the same manner as a deed of real property, in the office of the recorder for the county where the mortgagor resides, and also where the property is situated. Chattel mortgages may be foreclosed, as in the case of pledges by sale after demand; the mortgagee must give notice of the time and place of sale, which must be by public auction; or he may foreclose by action, and the court by its judgment may direct a sale of the property.

COLORADO.—The property must be delivered to the mortgagee, or the mortgage acknowledged and recorded in the county where the property, or a greater part is, and it is then valid for two years if the mortgage debt does not exceed $2,500, for five years if the debt does not exceed $20,000, and ten years for larger sums. If the amount exceeds $2,500 mortgagee must annually file a sworn statement that the mortgage was given in good faith to secure the sum mentioned therein, and the amount due. Mortgage for less than $300 for not exceeding six months may be filed without being recorded. When chattel mortgages are in form of trust deeds, they contain a power of sale by the trustee at public auction, on giving certain notice. Otherwise there is no statute provision in regard to foreclosure. After default the mortgagee has thirty days to take possession of the property, and until possession is taken mortgagor has right to redeem.

CONNECTICUT.—Machinery, engines, or implements situated or used in any manufacturing or mechanical establishment, presses, types, etc., pertaining fo a printing establishment, household furniture used in housekeeping, hay in a building, tobacco in the leaf, pianos, organs, and melodeons, and any instrument used by a band or orchestra, and brick, burned or unburned, in any kiln or brickyard may be mortgaged. The mortgage must be executed, acknowledged, and recorded in all respects as a deed of land, and, on breach of condition, may be foreclosed by order of court.

DELAWARE. — Chattel mortgages must be acknowledged and recorded within ten days, and the lien continues for five years. They must be renewed every three years. Mortgages are foreclosed by suit in court.

DISTRICT OF COLUMBIA. — Security on chattels is usually taken by deeds of trust, which must be recorded within twenty days, and which usually confer on the trustee power to sell in case of default after giving notice by advertisement.

FLORIDA. — The property mortgaged must be delivered to the mortgagee, or the deed must be executed and acknowledged in the same manner as deeds of real property (see Deeds, etc.), and recorded within ninety days in the office of records for the county where the property is at the time of the execution of the mortgage. The mortgage is foreclosed by bill in equity in the circuit court for the county where the property is, except mortgages for less than one hundred dollars, which may be foreclosed in a justice's court. When a mortgage is paid in full, it must be canceled on the records by the mortgagee, and failure to do so for thirty days after written demand is punishable by fine or imprisonment or both.

GEORGIA. — The mortgage must clearly indicate the creation of the lien, specify the debt and the property to be secured. It must be executed in presence of, and attested or proved by or before, a notary public or a judge or clerk of court, and recorded within thirty days in the county where the mortgagor resides, and in the county where the property is; but record at any time is due notice. In order to foreclose, the mortgagee must go before some officer of the State authorized to administer oaths (or a commissioner for Georgia, if he be a non-resident), and make an affidavit of the amount due, and that the mortgagor, if a resident of the State, resides in the county where the foreclosure is made, which affidavit shall be affixed to the mortgage, and the mortgage filed in the office of the clerk of the superior court for the county where the mortgagor resides; and the clerk shall thereupon issue an execution directing the sale of the property. The sheriff shall levy on the property, and after advertising weekly for four weeks, may sell the same. When the debt is not over one hundred dollars, the proceedings may be before a justice of the peace, who may issue execution after notice to the mortgagor, and the constable may sell after advertising sale in three or more public places in his district.

IDAHO. —Mortgages of personal property must state the residence of the mortgagor and mortgagee, the sum to be secured, rate of interest, and when and where payable, and the mortgagor must acknowledge the instrument and make affidavit that the mortgage is *bona fide,* and made without design to defraud or delay creditors. The mortgage and affidavit attached must be recorded in the county where the mortgagor resides, and also in that in which the property is situated. Foreclosure may be by action, or the mortgaged property may be sold at sheriff's sale.

ILLINOIS. — Mortgages of personal property are not valid unless the property is delivered to the mortgagee, or unless the instrument is acknowledged before a proper officer, and recorded in the county where he resides, or if he is a non-resident, in the county where the property is. The lien expires in three years from the date of record unless within thirty days before the expiration of three years, or the maturity of the debt, the parties file with the recorder and with the justice upon whose docket the acknowledgment was recorded, or his successor, an affidavit setting forth the interest of the mortgagee in the property, the amount unpaid and when due, by which the lien is extended for one year longer from the filing thereof, or until the maturity of the debt not to exceed one year. After default, the mortgage must be at once foreclosed, or the lien will be lost. Chattel mortgages usually contain a power of sale and may be foreclosed in accordance therewith, except mortgages on necessary household goods, wearing apparel, or mechanics' tools, which can be foreclosed only in a court of record. A mortgage by a married man or woman on household goods is not valid unless joined in by wife or husband.

INDIANA. — If the goods are not delivered, the mortgage must be acknowledged in the same manner as deeds of real property, and recorded within ten days in the county where the mortgagor lives, or if he be a non-resident in the county where the property is. There is no strict foreclosure. The mortgagee is entitled to possession of the property on breach of the condition, and may bring an action to recover the same, but the equity of redemption of the mortgagor can be extinguished only by public sale after proper notice, or by sale on foreclosure proceedings. Mortgage of household goods must be foreclosed by suit.

IOWA. — The mortgage is not valid unless it is in writing, signed, acknowledged and recorded in the county where the holder of the property resides. Chattel mortgages for the payment of money only, and in which the time of payment is fixed, may be foreclosed by notice and sale. The notice must contain a full description of the property, and the time and place of sale, with the terms of the same, such notice to be served on the mortgagor and purchasers from him, and on all persons having recorded liens subsequent to the mortgagor, and afterwards published in the same manner as in case of sale of property on execution. Mortgage of property exempt from execution must be signed by both husband and wife.

KANSAS. — Unless the property be delivered to the mortgagee, the mortgage, or a copy of it, must be deposited in the office of the register of deeds for the county where the mortgagor resides, or where the property is if he is a non-resident, and, in order to preserve the lien, an affidavit must be filed within thirty days of the expiration of each two years by the mortgagee, stating that his interest is a continuing one, and the amount then due. After condition broken, the mortgagee or his assignee may proceed to sell the mortgaged property, or so much thereof as is necessary to satisfy the mortgage, having first given notice of the time and place of the sale by written or printed handbills posted in at least four different places in the township or city in which the property is to be sold, at least ten days before the sale, or if the mortgage so provides he may sell at private sale. Mortgage of exempt property must be signed by husband and wife jointly. Promissory notes and other written instruments evidencing conditional sale of personal property retaining title in vendor until price is paid in full are subject to the same provisions as to record, etc., as chattel mortgages.

KENTUCKY. — Chattel mortgages must be acknowledged, and recorded in the office of the clerk of the court for the county where the mortgagor resides. They may be foreclosed by bill in equity. If the mortgagee takes possession for foreclosure, the mortgagor has five years to redeem.

LOUISIANA. — Chattel mortgages are unknown.

MAINE. — Mortgages of personal property are not valid unless the property is delivered, or the mortgage is recorded by the clerk of the town resides, or if he is a non-resident, in the town where the property is when the mortgage is made. After condition broken, the mortgagee or his assignee may give the mortgagor written notice of his intention to foreclose, by leaving a copy thereof with the mortgagor, or, if he is absent from the State, by leaving such copy at his last and usual place of abode, or by publishing a copy once a week, for three successive weeks, in one of the principal papers of the town where the mortgage is recorded. The notice, with an affidavit of service, or copy of the publication, must be recorded where the mortgage is recorded, and all right of redemption is forfeited in sixty days after such notice is recorded. If the mortgagee is a non-resident, he must record with such notice his appointment of an agent in the same town, to whom tender or payment may be made. Notes given for the purchase of property, with the proviso that it shall remain the property of the payee until paid, are subject to the same provisions as to record and foreclosure as chattel mortgages.

MARYLAND.— Mortgages and bills of sale must contain the names of the parties, the consideration, and a description of the property mortgaged, and an affidavit by the mortgagee that the consideration named is true and *bona fide* as set forth, and that the mortgagor has not been required to pay the mortgage tax; they must be signed, sealed, dated, and acknowledged, and recorded in the county or city where the vendor resides within twenty days after the date of the mortgage. The mortgage may be foreclosed by sale under the supervision of a court of equity.

MASSACHUSETTS.—Chattel mortgages need not be under seal nor acknowledged. They must be recorded within fifteen days after date on the records of the city or town where the mortgagor resides, and also in the city or town in which he principally transacts his business. If a non-resident, the mortgage must be recorded in the city or town where the property is. If it requires to be twice recorded, the second record will be good if made within ten days after the first. A record not made within the time specified is of no effect. The mortgagee or his assigns, after condition broken, may give to the mortgagor written notice of his intention to foreclose the same, which notice shall be served by leaving a copy with the mortgagor, or person in possession of the property claiming the same, or by publishing it at least once a week, for three successive weeks, in one of the principal newspapers published in the town or city where the mortgage is properly recorded, or where the property is situated. The notice, with an affidavit of service, shall be recorded wherever the mortgage is recorded. Unless the mortgagor tenders payment of the amount due within sixty days after such record the right to redeem will be foreclosed. If the mortgage contain a power of sale, the property may be sold in accordance with its terms.

MICHIGAN.—If not accompanied by delivery of the property mortgaged, the mortgage or a copy thereof must be recorded in the office of the clerk of the city or town where the mortgagor resides, or, if he be a non-resident, where the property is, and, within thirty days before the expiration of each year, the mortgagee must file an affidavit setting forth his interest in the property. There are no statute provisions in regard to foreclosure. Each mortgage should contain provisions as to its own foreclosure, which will be carried into effect. In the absence of such provisions, foreclosure will be by proceedings in chancery. A mortgage may be made to cover goods purchased to replace the stock originally mortgaged.

MINNESOTA. — The mortgage must be made in good faith and not for the purpose of hindering, delaying, or defrauding creditors. It must either be attested by two witnesses, acknowledged and recorded in the clerk's office of the town where the property is situated or, if not so attested and recorded, the mortgagee must have immediate possession of the goods or property and maintain such possession until the debt is paid. The lien continues for six years from the date of filing, or, if debt is not then due, for two years after maturity. Mortgage of exempt property must be executed by both husband and wife. Foreclosure must be by public sale in the county where the property is or the mortgage filed. Notice of sale containing names of mortgagor, mortgagee, and assignee, of any, date of mortgage, nature of default and amount due, description of the property, time and place of sale and name of person foreclosing, must be served upon person in possession of the property and mortgagor, if in the county, and posted in three public places in the county at least ten days before the sale. Person foreclosing must within three days after sale file in the office where the mortgage is filed a report, under oath, of foreclosure proceedings, specifying property sold, amount received, account of costs and expenses and of the disposition of proceeds and amount applied on mortgage debt. Property sold may be redeemed within two days after sale.

MISSISSIPPI. — Mortgages of personal property must be acknowledged, and recorded in the office of the clerk of the court of chancery for the county where the property is, and are notice to third parties from the date of record. The mortgage should contain provisions as to foreclosure, sale, etc., and may be foreclosed in accordance with the terms expressed in the same.

MISSOURI. — Mortgages are usually in form of deed of trust with power of sale. Unless the property is delivered, the mortgage must be acknowledged or proved and recorded in the county where the mortgagor resides, or, if he be a non-resident, where the property is. Mortgages with power of sale may be foreclosed in accordance with such power, and such sale bars the right of redemption. All mortgages in which the debt, exclusive of interest does not exceed one hundred dollars, may be foreclosed by sale of the property by the mortgagee, he first giving sixty days' notice after default that the property will be sold, and thirty days' notice of the time and place of sale. All other mortgages may be foreclosed by petition to the circuit court.

MONTANA. — A chattel mortgage must be accompanied by an affidavit of the parties that it is made in good faith to secure the amount named therein, and without design to hinder or delay creditors, and must be acknowledged and filed in the office of the recorder of deeds of the county where the mortgagor resides, or if he be a non-resident, where the property is situated, and is good for one year and sixty days from the date of filing, but may be renewed for a period not exceeding one year by filing an affidavit at or before maturity of debt, showing names of mortgagor and mortgagee, date of filing, amount of debt secured and amount then due, and that mortgage was not made or renewed to hinder, delay, or defraud creditors or subsequent mortgagees. Foreclosure is the same as in the case of mortgages of real property, but the mortgage may contain a clause authorizing the sheriff to sell the property on default, in which case he may sell in the manner specified in the mortgage without further legal proceedings.

NEBRASKA.— The property must be delivered, or else the mortgage, or a copy, filed in the office of the county clerk of the county where the mortgagor resides, or, if he be a non-resident, where the property is situated, and ceases to be valid as against creditors, etc., after five years from date of filing. A mortgage with power of sale may be foreclosed by giving at least twenty days' notice of the time and place of sale. The notice shall specify the mortgage, parties, the amount due, and description of the property, and time and place of sale, and shall be published in some newspaper in the county where the property is, or, if no newspaper is published in said county, then by posting up notice in at least five public places in the county, two of which shall be in precinct where sale is to take place. The sale shall be by public auction. If the mortgage contains no power of sale, it may be foreclosed by action. Mortgage of household goods must be signed and acknowledged by both husband and wife.

NEVADA.— Chattel mortgages are allowed for sums not less than one hundred dollars. Unless property is delivered to mortgagee, the mortgage must be recorded in the office of the recorder of county where the mortgagor resides and also where property is situated and be accompanied by affidavit of both parties that mortgage is made in good faith for debt actually owed by mortgagor, the amount and character of debt, and that same is not made to hinder, delay, or defraud creditors. Foreclosure is by action and decree for sale of property.

NEW HAMPSHIRE.— Possession must be delivered to and retained by the mortgagee, or the mortgage recorded with the clerk of the town where the mortgagor resides, or if the mortgagor resides out of the State, in the town where the property is situated. Both parties must make affidavit that the mortgage is made in good faith, and to secure an existing debt. The mortgagee, at any time after thirty days from the time the condition is broken, may sell the mortgaged property at auction, notice of the time, place, and purposes of the sale being posted at two or more public places in the town in which the sale is to be, at least four days prior thereto. The mortgagee shall notify the mortgagor at least four days prior to the sale. He may purchase at such sale, and the mortgagor may redeem at any time before the sale.

NEW JERSEY.—Unless accompanied by delivery of the property, the mortgage must be acknowledged and it or a copy thereof, together with an affidavit of the holder of the mortgage, stating the consideration, and, as nearly as possible, the amount due and to become due thereon, must be filed in the clerk's office for the county where the mortgagor resides, or, if he is a non-resident, in the county where the property is. If there is a registry of deeds in the county, the mortgage must be filed in such registry. After acquired property may be included in the mortgage. Foreclosure is usually enforced by sale conducted in the same manner as sales of personal property taken under execution. Foreclosure may also be made by suit in equity. Five days' notice in writing, stating amount due, must be given before foreclosure of mortgage on household goods.

NEW MEXICO.—A mortgage of personal property must be acknowledged and recorded in the office of the recorder of the county where the property is situated: and every year thereafter, within thirty days of the expiration thereof the mortgagee must file with the mortgage an affidavit showing his interest in the mortgaged property, and the amount due thereon. After condition broken, the mortgagee may sell the property, or so much thereof as may be necessary, after publishing notice of sale for four weeks in newspaper in the county where the property is situated.

NEW YORK. — The mortgage, or a true copy, must be filed in the office of the city clerk of the city or town where the mortgagor resides, or, if a non-resident, where the property is, unless the office of the county clerk or register is in such city or town, in which case it must be filed therein; and every year, within thirty days before the expiration of the same, the mortgagee must file a copy of the mortgage and an affidavit showing his interest in the property, or a statement describing the mortgage, the date and place of record, and the interest of the mortgagee therein. The mortgagee may take possession of the property after condition is broken, and sell the same either at private sale or by public auction. It is customary to give three day's public notice if the sale is by auction, and the mortgagor may redeem at any time before the sale, but not after. If the mortgage contains terms of provisions as to foreclosure, sale, etc., the foreclosure will be governed by them. Mortgage on canal craft must be filed in comptroller's office and is valid as long as debt is enforcible.

NORTH CAROLINA. — Mortgages and conditional sales are not valid unless recorded in the county where the mortgagor resides, or, if he is a non-resident, in the county where the property is. On breach of condition, if the mortgage contain a power of sale, the mortgagee may proceed to sell at auction, first giving twenty days' notice at the court-house door as well as in the manner prescribed by the mortgage itself; or the foreclosure may be made by suit in court. If household furniture be mortgaged mortgagor's wife must join.

NORTH DAKOTA. — Unless the mortgagor's acknowledgment is taken, a chattel mortgage must be in writing subscribed by the mortgagor in the presence of two witnesses, who must sign as such, and be recorded in the office of the register of deeds of the county in which the property is situated and is good for three years. A proviso that the mortgage shall cover after acquired property is valid. It may be renewed within ninety days before the expiration of three years from date of filing by filing in the office of the register of deeds a copy of the mortgage with a statement of the balance then due, duly subscribed and sworn to by the mortgagor or his agent or attorney. Foreclosure may be by action, or, if containing, a power of sale, it may be by public sale on six days' notice if published in a newspaper, or ten days if posted. By giving notice at sale mortgagor may redeem in five days.

OHIO. — If the property is not delivered, the mortgage is absolutely void, unless it is deposited with the county recorder of the county where the mortgagor resides, or if he is not a resident, then of the county wherein the property is situated when the mortgage is executed, to be kept by him for the inspection of all persons interested. The party depositing the instrument may at his own expense have it recorded by such county recorder. The mortgagee must file under oath a statement of his claim in dollars and cents, and that it is unpaid; and a copy of the mortgage and affidavit must be filed within thirty days before the expiration of each year thereafter. There are no provisions in regard to foreclosure of chattel mortgages as distinguished from other mortgages. Any provisions or terms in the mortgage would be carried into effect. The mortgagor is entitled to possession and use of the property. After acquired property must be reduced to possession by the mortgagee in order to be covered by the mortgage.

OKLAHOMA. — Mortgage must be signed by mortgagor in presence of two witnesses, and it or a true copy must be deposited in office of register of deeds of county where mortgagor lives or if a non-resident, in county where the property is, and is good for three years from date of filing, but may be extended by filing within thirty days before the expiration of the three years a copy of mortgage and affidavit of amount still due. Foreclosure may be by suit, or, under certain conditions by sale after ten days' notice.

OREGON. — Mortgages of personal property must be executed, acknowledged, and recorded in the same manner as conveyances of real estate (see Deeds). Every such mortgage is void against subsequent purchasers in good faith, unless there has been immediate delivery and a change of possession, or unless it has been duly recorded. After condition broken, the mortgagee is entitled to possession, and he may recover the same by suit. The mortgage may provide how it shall be foreclosed, in which case that method, and no other, shall be followed. In the absence of any other provision, foreclosure is by action, but where the consideration is less than five hundred dollars, the property may be sold by a sheriff or constable on the written request of the mortgagee.

PENNSYLVANIA. — Leases of collieries, manufactories, mines, and other premises with the buildings and machinery, may be mortgaged, also iron ore, manufactured iron, boilers, engines, oil, gas, and artesian well supplies, petroleum, roofing and manufactured slate, asphaltum, and cement,— in these latter cases for sums not less than one hundred dollars,— provided the mortgage is recorded in the same manner as deeds of real estate. With these exceptions, no mortgages of personal property are authorized by statute. The mortgage must be made in form prescribed by statute, and properly acknowledged and recorded. Loans on personal security are mere pledges, and the lender must take possession of the property pledged.

RHODE ISLAND. —Unless the property is delivered to the mortgagee, the mortgage must be recorded within five days, in the office of the clerk of the town where the mortgagor resides, or where the property is, if he be a non-resident. The mortgagee may take possession after condition broken. If there are any provisions in the instrument, the property may be sold in accordance therewith. Redemption at law may be had at any time within sixty days after breach, unless the property has been sold as above. The equity may be foreclosed by bill of equity.

SOUTH CAROLINA. — Property mortgaged must be described in writing or typewriting, not printing, on the face of the mortgage. The mortgage must be proved by affidavit of a subscribing witness and recorded within forty days in the office of the register of mesne conveyances if in the counties of Charleston or Grenville, elsewhere with the clerk of the court of common pleas of the county where the mortgagor resides; or, if he be a non-resident, where the property is situated. Mortgages of stock in trade are valid and cover after required property substituted for goods sold. Recording after forty days is notice only as to subsequent creditors or purchasers. Foreclosure by sale after notice posted for fifteen days in three public places in the county where the property is, one of which shall be the courthouse door, or after publication for two weeks in the county where the mortgagee resides, unless the mortgagee has otherwise agreed in writing.

SOUTH DAKOTA. — Mortgage must be in writing subscribed by the mortgagor in the presence of two witnesses, who must sign as such, and be filed in the office of the register of deeds of the county in which the property is situated. No acknowledgment is necessary. It must bear a certificate signed by the mortgagor that he has received from the mortgagee a true copy of the mortgage. It is good for three years from the date of filing, but may be extended within thirty days before the expiration of said three years by filing in the office of the register of deeds a copy of the mortgage with a sworn statement of the amount then due. Foreclosure may be by action, or on six days' notice by publication in a newspaper nearest the place of sale.

TENNESSEE.— Mortgages must be acknowledged or proved and registered in the county where the mortgagor resides, or, if he be a non-resident, where the property is situated. If the mortgage contain a power of sale, it may be foreclosed in accordance therewith; if not, it is foreclosed by bill in equity.

TEXAS.—A chattel mortgage must be filed in the office of the clerk of the county where the mortgagor resides, or, if a non-resident, where the property is situated. It is foreclosed by suit, and the property is sold under decree of the court. If the property is removed from the county without the mortgagee's consent, the latter is entitled to immediate possession and sale, whether the debt is due or not.

UTAH.—A chattel mortgage must be accompanied by an affidavit of the parties that it is made in good faith to secure the sum named, and not intended to hinder or delay creditors, and must be witnessed, acknowledged, and recorded in the county where the mortgagor resides, or, if he be a non-resident, where the property is situated. Within thirty days before the expiration of each year an affidavit of the mortgagee, or his agent, showing his interest in the property and the amount due must be filed. No mortgage is valid for more than five years. If it contain a power of sale, it may be foreclosed by the sale of the property without legal proceedings, provided certain statutory provisions as to notice, etc., are complied with; otherwise the foreclosure will be by suit.

VERMONT.—Mortgages of personal property must be recorded in the office of the clerk of the town where the mortgagor resides, or, if he be a non-resident, where the property is situated, and must be accompanied by an affidavit, subscribed by the mortgagor and mortgagee, that the mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever, and that the same is a just debt, honestly due, and owing to the mortgagee. At any time after thirty days from the time of condition broken, the mortgagee may cause the property to be sold at public auction by a public officer in the town where the mortgagor resides, or where the property is situated, provided notice of the time, place, and purpose of the sale has been posted in two or more public places in such town ten days previously, and ten days' notice in writing given to the mortgagor. Any surplus is paid to the mortgagor, or applied on subsequent mortgages, if there be any such. The officer must make return of his doings to be filed and recorded when the mortgage is recorded.

VIRGINIA.—Chattel mortgages are executed, acknowledged, and recorded in the same manner as deeds of real estate (see Deeds). Chattel mortgages are usually given as deeds of trust, in which case they may be foreclosed by the trustee according to the terms of the mortgage, without the intervention of the courts.

WASHINGTON.—A mortgage of personal property must be accompanied by the affidavit of mortgagor that it is made in good faith, and without design to hinder, delay, or defraud creditors, and must be acknowledged and recorded in the same manner as a deed of real estate. The mortgagee may take possession of the property on default, or previously if he has reasonable ground to believe that the security is endangered, and may have it sold by the sheriff. Notice of the time and place of sale and amount due must be served on the mortgagor, and like notice must be given of the sale as of sales on execution. If the right to foreclose or amount due is disputed, the proceedings may be transferred to the district court, or the foreclosure may be made by suit in court in the first instance.

WEST VIRGINIA.—Chattel mortgages require the same formalities as deeds of real estate, must be executed under seal or scroll, acknowledged, or else proved by two witnesses, and recorded in the county where the property is. Chattel mortgages are seldom used, and are foreclosed in court of equity after decree. Deeds of trust usually take their place, and, after default, the trustee may sell the property, after due notice, without recourse to the courts.

WISCONSIN.—The mortgage, or a copy, is to be filed in the office of the clerk of the town, city, or village where the mortgagor resides, or if he is a non-resident, where the property is; and every two years, within thirty days before the expiration thereof, the mortgagee must file an affidavit showing his interest in the mortgaged property. After condition broken, the mortgagee may take possession of the property and at the expiration of five days sell the same, and any surplus over the debt and costs must be returned to the mortgagor. Mortgages of marked logs must be recorded in the office of the lumber inspector of the district where the marks are recorded. Mortgages of exempt property or household furniture must be signed by the mortgagor's wife in the presence of two witnesses.

WYOMING.— A chattel mortgage must be executed and acknowledged like conveyances of real estate, and recorded in the clerk's office of the county where the property is situated. It is then valid for two months after the expiration of the term for which it was given, but may be renewed for another year by filing an affidavit setting forth the mortgagee's interest in the mortgage, and may be further renewed annually in the same manner. It is foreclosed by sale at public auction, after three weeks' advertisement of the time and place of such sale.

CHAPTER XXXIII.

THE LAW OF PATENTS.

WHAT MAY BE PATENTED.

Section 4,886 of the Revised Statutes of the United States provides that "any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor."

In case of the death of the inventor, his legal representatives will be entitled to apply for and receive the patent.

Joint inventors are entitled to a joint patent, but neither can claim one separately.

An alien may obtain a patent on the same terms as a citizen.

Merely conceiving the idea of a machine or improvement is not such an "invention" or "discovery" as will prevent a subsequent inventor from obtaining a patent.

In order to have this effect, the alleged prior invention must have been reduced to a practical form, capable of actual use; and, in most cases, actual use itself is also held to be necessary.

Nor will the fact of prior use or invention abroad prevent the issue of the patent, unless the invention has been patented or described in some printed publication.

As between two rival inventors, however, the rule is that he who first conceives the idea of an invention, and uses reasonable diligence in reducing it to practice, is the prior inventor as against one whose conception of the idea was later, though he was the first to reduce the invention to practice. In such a case, drawings, models, or even oral descriptions may be used for the purpose of proving the date of the conception of the invention.

Patents are now granted for the term of seventeen years, and confer on the patentee, his legal representatives and assigns, the exclusive right to make, use, and vend the invention throughout the United States during that time.

It is of the utmost importance that the description of the invention in every patent should be clear and accurate, and that the claim should cover neither more nor less than the actual invention.

This is now the more important, as the right to surrender and re-issue a patent on account of defects in these respects, has recently been greatly limited by the courts.

We therefore earnestly advise every inventor to employ some skillful and experienced solicitor to procure his patent for him whenever it is possible for him to do so.

As it sometimes happens, however, that this cannot be done, we insert the following general instructions for procuring patents and attending to other business in the patent-office.

Mode of Proceeding to Obtain a Patent.

APPLICATION.

All applications must be completed for examination within two years after the filing of the petition; and, in default, all such will be regarded as abandoned, unless it be satisfactorily proved to the office that such delay was unavoidable. The application must be made by the actual inventor, if alive, even if the patent is to issue to an assignee; but, where the inventor is dead, the application and oath may be made by the executor or administrator. The application must be in writing, in the English language, signed by the applicant, and addressed to the Commissioner of Patents, Washington, D. C. The following is a suitable form, which may serve as a useful guide, but must be varied according to circumstances:

(244.)

Form of Petition.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, A. B., a citizen of the United States, residing at S., in the County of M. and State of N. [or a subject of, etc.], whose postoffice address is , prays that letters patent be granted to him for the improvement in , set forth in the annexed specification. A. B.

SPECIFICATION.

The specification is a written description of the invention or discovery and of the manner and process of making, constructing, or compounding, and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it appertains, or with which it is most nearly connected, to make, construct, or compound, and use the same. It must conclude with a specific and distinct claim or claims of the part, improvement, or combination which the applicant regards as his invention or discovery.

In all applications for mere improvements, the specification must distinguish between what is admitted to be old and what is described and claimed to be the improvement, so that the office and the public may understand exactly for what the patent is granted.

Two or more distinct and separate inventions may not be claimed in one application; but where several inventions have a necessary and dependent connection with each other, so that all coöperate in attaining the end which is sought, they may be so claimed. If more than one invention is claimed in a single application, and they are found to be such that a single patent may not be issued to cover the whole, the inventor must divide the application into separate applications, or confine the claim to whichever invention he may elect.

The specification must be signed by the inventor (or by his executor or administrator, if the inventor be dead), and attested by two witnesses. It should describe the sections of the drawings (where there are drawings), and refer by letters and figures to the different parts.

The rules of the Patent Office recommend that the following order of arrangement should be observed, when convenient, in framing the specification;

(1) Preamble giving the name and residence of the applicant, the title of the invention, and if the invention has been patented in any country, a statement of the country or countries in which it has been patented, and the dates and numbers of such patents.

(2) General statement of the object and nature of the invention;

(3) Brief description of the drawings, if any, showing what each view represents;

(4) Detailed description, explaining fully the alleged invention, and the manner of constructing, practicing, operating, and using it;

(5) Claim or claims;

(6) Signature of inventor;

(7) Signatures of two witnesses.

The specification and claims and all amendments must be written in a fair, legible hand, on but one side of the paper; otherwise the office may require them to be printed; and all interlineations and erasures must be clearly marked in marginal or foot notes written on the same sheet of paper. Legal cap paper with the lines numbered is deemed preferable and a wide margin must always be reserved on the left hand side of the page.

(245.)

Form of a Specification to Accompany a Petition.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, of in the county of and State of have invented a new and useful means for preventing steam boilers from bursting (for which I have received letters patent in England, dated July 6, 1898, No. 750), and I do hereby declare that the following is a full, clear, and exact description of the same:

The nature of my invention consists in providing the upper part of a steam boiler with an aperture in addition to that for the safety-valve, which aperture is to be closed by a plug or disk of alloy, which will fuse at any given degree of heat, and permit the steam to escape, should the safety-valve fail to perform its functions.

In the accompanying drawings Fig. 1 is a longitudinal section of a boiler embodying my invention, and Fig. 2 is a perspective view of the same.

To enable others skilled in the art to make use of my invention, I will proceed to describe its construction and operation. I construct my steam boiler in any of the known forms, and apply thereto gauge-cocks, a safety-valve, and the other appendages of such boilers; but in order to obviate the danger arising from the adhesion of the safety-valve, and from other causes, I make a second opening in the top of the boiler, similar to that made for the safety-valve, as shown at A, in the accompanying drawing; and in this opening I insert a plug or disk of fusible alloy, securing it in its place by a metal ring and screws, or otherwise. In general, I compose this fusible metal of a mixture of lead, tin, and bismuth, in such proportions as will insure its melting at a given temperature, which must be that to which it is intended to limit the steam; it will, of course, vary with the pressure the boiler is intended to sustain.

I surround the opening containing the fusible alloy by a tube, B, intended to conduct off any steam which may be discharged therefrom. When the temperature of the steam in such a boiler rises to its assigned limit the fusible alloy will melt and allow the steam to escape freely, thereby securing it from all danger of explosion.

What I claim as my invention, and desire to secure by letters patent, is the application to steam boilers of a fusible alloy which will melt at a given temperature and allow the steam to escape, substantially as herein described.

(*Signature.*)

(*Witnesses.*)

When the application is for a machine, the specification should be modified accordingly.

The applicant must make oath or affirmation substantially as follows, which is to be annexed to the specification:

(246.)

Form of Oath.

STATE OF } SS:
COUNTY OF }

the above named petitioner, being duly sworn (or affirmed) deposes and says that he is a citizen of and resident of ; that he verily believes himself to be the original, first and sole inventor of the improvement in described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; and that no application for patent on said improvement has been filed by him or his representatives or assigns in any country foreign to the United States (except as follows):

(*Inventor's full name.*)

Sworn to and subscribed before me this day of 19

(*Signature of magistrate.*)

[L.S.] (*Official character.*)

If the applicants be joint inventors the form of the oath will be changed accordingly, and the word joint used instead of sole.

If the inventor be dead the oath will be made by the executor or administrator who will declare his belief that the party named as inventor was the original and first inventor.

Citizens of the British Provinces should state specifically the provinces of which they are citizens, and not merely that they are subjects of the crown of Great Britain. The oath may be taken before any person authorized by law to administer oaths, but a notary public or U. S. Commissioner is preferable. The oath may be taken in a foreign country before any minister plenipotentiary, chargé d'affaires, consul, or commercial agent, holding commission under the government of the United States, or before any notary public of the country in which the oath is taken, being attested in all cases by the proper official seal of such notary.

DRAWINGS.

The applicant for a patent is required by law to furnish drawings of his invention when the nature of the case admits of them.

The drawings must be signed by the inventor or by his attorney in fact, and attested by two witnesses, and must show every feature of the invention covered by the claims.

Different views of the whole invention and of its parts may be given in perspective, longitudinal, or cross section, etc., so as clearly to show their construction and mode of operation. If one sheet is insufficient for this purpose, others may be added, the several sheets being distinguished and referred to by numbers. Each part must be distinguished by the same letter or number, wherever it appears in the several drawings.

The rules of the Patent Office require that all drawings be made upon pure white paper of a thickness corresponding to "three sheet Bristol board," and that they shall be made with the pen, and that India ink only must be used. The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edge a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches.

Within this margin all work and signatures must be included. One of the shorter sides is regarded as the top, and measuring downward from the marginal line a space of not less than 1¼ inch is to be left blank for the heading of title, name, number, and date.

The signature of the inventor is to be placed at the lower right hand corner of the sheet, and the signatures of the witnesses at the lower left hand corner, all within the marginal line. The title is to be written in pencil on the back of the sheet. The permanent names and title will be supplied by the office.

Drawings should be rolled for transmission to the office,—not folded.

MODEL.

A model is no longer required, unless the examiner to whom the case is referred deems it necessary, and of this the applicant will be duly notified.

It must be neatly and substantially made, and of durable material, metal being preferred, and must not exceed one foot in length, breadth, or height. If made of wood, it must be painted or varnished, and the parts must be securely fastened without glue.

Whenever practicable, the name of the inventor should be permanently affixed.

When the invention or discovery consists of a composition of matter, the commissioners may require the applicant to furnish a specimen of the composition and of its ingredients sufficient in quantity for the purpose of experiment.

In all cases where the article is not perishable, a specimen of the composition claimed, put up in proper form to be preserved by the office, must be furnished, if required.

COMPLETION OF THE APPLICATION.

No application is examined, nor is the case placed upon the files for examination, until the preliminary fee is paid, and the specification, with the petition, oath, and drawings (when required), filed. It is desirable that everything necessary to make the application complete should be deposited in the office at the same time.

OF THE EXAMINATION.

All cases in the Patent Office are arranged in classes, which are taken up for examination in regular rotation; those in the same class being examined and disposed of, as far as practicable, in the order in which the respective applications are completed.

When, however, the invention is deemed of peculiar importance to some branch of the public service, and when, for that reason, the head of some department of the government specially requests immediate action, the case will be taken up out of its order. These, with applications for re-issue, and for inventions for which a foreign patent has been issued, are the only exceptions to the rule above stated in relation to the order of examination.

REJECTIONS.

Whenever, on examination, any claim of an application is rejected for any reason whatever, the applicant will be notified thereof, and the reason for such rejection will be fully and precisely stated, and such information and references given as may be useful in judging of the propriety of prosecuting the application or of altering the specification or claims; and if, after receiving such notice, the applicant shall persist in his claim, with or without altering his specification, the case will be re-examined. If, on re-examination, it shall be again rejected, the reasons therefor will be fully and precisely stated.

AMENDMENTS.

The applicant has a right to amend his specification or claims before or after the first rejection; and he may amend as often as the examiner presents any new references or reasons for rejection. In so amending the applicant must clearly point out all of the patentable novelty which he thinks the case presents, in view of the state of the art disclosed by the references cited or objections made.

He must also show how the amendments avoid such references or objections.

No alterations or amendments, except of clerical errors, will be allowed after an appeal to the examiner-in-chief, or after the patent has been ordered to issue, unless the same are approved by the examiner in charge.

All amendments of the model, drawings or specifications, must conform to at least one of them as they were at the time of the filing of the application; and all amendments of specifications or claims must be made on separate sheets of paper from the original, and must be filed in the manner above directed. Even when the amendment consists in striking out a portion of the specification, or other paper, the same course should be observed. No erasures must be made. The papers must remain forever just as they were when filed, so that a true history of all that has been done in the case may be gathered from them.

The following are forms proper to be observed in such cases:

Form of Amendment of Specification.

TO THE COMMISSIONER OF PATENTS.

In the matter of my application for letters patent for an improvement in , filed , serial number

"I hereby amend my specification by inserting the following words after the word , in the line of the page thereof" (here should follow the words that are to be inserted); or, "I hereby amend my specification by striking out the line of the page thereof;" or, "by striking out the first and fourth clauses of the claim appended thereto"; (or whatever may be the amendment desired by the applicant.)

Signed at , in the county of , and State of , 1900.

(*Signature.*)

In each case the exact word to be stricken out or inserted should be clearly described, and the precise point indicated where any insertion is to be made. When more than one alteration is made, a separate paragraph should be devoted to each.

WITHDRAWALS.

Although an application be rejected, no money paid thereon, nor for a design, nor for a re-issue, can be withdrawn from the Patent Office by the applicant.

APPEALS.

After an application for a patent has been twice rejected by the examiner having it in charge, it may, at the option of the applicant, be brought before the board of examiners-in-chief, on payment of a fee of ten dollars.

For this purpose, a petition in writing must be filed, signed by the party or his authorized agent or attorney, setting forth the points of the decision upon which the appeal is taken.

(247.)

Form of Appeal to the Examiner

To the Commissioner of Patents.

Sir,— I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for a patent for an improvement in (*here state the subject of the invention*) filed , rejected a second time on day of . The following are the points of the decision on which the appeal is taken.

Respectfully,

(*Place and date of signing.*) (*Signature.*)

The appeal must be submitted to the primary examiner, who will, if he finds it regular in form, furnish the examiners-in-chief with a written statement of the grounds of his decision, with copies of the rejected claims and the references applicable thereto. The appellant must, before the day of hearing, file a brief of the authorities and arguments on which he relies to sustain his appeal. If he desires to be heard orally he must so indicate when he files his appeal.

The examiners-in-chief will consider the case as it was when last passed upon by the primary examiner, merely revising his decisions so far as they were adverse to the applicant.

All cases which have been acted on by the board of examiners-in-chief may be brought before the commissioner in person, upon a written request to that effect, and upon the payment of the fee of twenty dollars required by law. A decision deliberately made and approved by one commissioner will not be disturbed by his successor. The only remaining remedy will be by appeal in those cases allowed by law to the judges of the Supreme Court of the District of Columbia.

The mode of appeal from the decision of the office to the judges of the Supreme Court of the District of Columbia is by giving written notice thereof to the commissioner, filing in the Patent Office, within thirty days after notice of the decision, reasons of appeal, and paying to him the sum of twenty-five dollars. Printed forms of notice of appeal, of the reasons of appeal, of the petition, and also the rules of practice of the Supreme Court of the District of Columbia respecting appeals, will be forwarded from the Patent Office to any one wishing to make an appeal, on his request.

INTERFERENCES.

When each of two or more persons claims to be the first inventor of the same thing, an "interference" is declared between them, and a trial is had before an officer called the examiner of interferences. Nor does the fact that one of the parties has already obtained a patent prevent such an interference; for, although the commissioner has no power to cancel a patent already issued, he may, if he finds that another person was the prior inventor, give him also a patent, and thus place them on an equal footing before the courts and the public. If an applicant for a re-issue embraces in his amended specification any new or additional description of his invention, or enlarges his claim, or makes a new one, and thereby includes therein anything which has been claimed in any patent granted subsequent to the date of his original application, as the invention of another person, an interference will be declared between the application and any unexpired patent, or pending application, in which the same thing is claimed; but not where such pending application for re-issue claims only what was granted in the original patent.

When an application is found to conflict with a caveat, the caveator is allowed a period of three months within which to present an application, when an interference may be declared. In cases of interference, patentees have the same remedies by appeal as applicants in pending applications.

Each party to the interference will be required to file a concise statement under oath showing the date of his original conception of the invention, of its illustration by drawing or model, of its disclosure to others, of its completion, and of the extent of its use.

The parties will be strictly held in their proof to the dates set up in their statements. These statements must be sent under seal, and the name of the party, title of the case, and nature of the invention endorsed on the envelope.

Neither party is allowed to see the statement of the other until both have been filed.

An applicant involved in an interference may, before the date fixed for filing his statement, disclaim over his own signature attested by two witnesses, the invention of the particular matter in issue, and upon such disclaimer and the cancellation of any claims involving such interfering matter, judgment shall be rendered against him and the disclaimer shall be embodied in and form part of his specification.

In cases of interference, the party who first made oath to the invention will be deemed the first inventor in the absence of all proof to the contrary. A time will be assigned in which the other party shall complete his direct testimony, and a further time in which the adverse party shall complete the testimony on his side; and a still further time in which the first party shall close his rebutting testimony, but shall take no other. If there are more than two parties, the times for taking testimony shall be so arranged that each shall have a like opportunity in his turn, each being held to go forward and prove his case against those who made oath to their applications before him. If either party wishes the time for taking his testimony, or for the hearing, postponed, he must make application for such postponement, and must show sufficient reason for it by affidavit filed before the time previously appointed has elapsed, if practicable; and must also furnish his opponent with copies of his affidavits, and with seasonable notice of the time of hearing his application.

In contested cases, whether of interference or of extension, parties may have access to the testimony on file, prior to the hearing, in presence of the officer in charge; or when practicable, copies may be obtained by them at the usual charges.

RE-ISSUES.

A re-issue is granted to the original patentee, his heirs, or the assignees of the entire interest, when, by reason of an insufficient or defective specification, the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, without any fraudulent or deceptive intention.

Unless applied for immediately after the issue of the original patent, a re-issue will not be allowed for the purpose of expanding or enlarging the claims of the original, even though the invention, as thus claimed, was described or shown in the original specification and drawings, and might properly have been embraced in the original patent. Two years has been indicated as the extreme limit within which re-issues for this purpose will be allowed.

The courts have recently construed re-issued patents very strictly in this respect, and it is therefore very important that the inventor should carefully examine his patent as soon as possible after its issue to ascertain that it embraces everything to which he is justly entitled.

Re-issued patents expire at the same time that the original patent would have done. For this reason, applications for re-issue will be acted upon immediately after they are completed.

A patentee may, at his option, have in his re-issue a separate patent for each distinct part of the invention comprehended in his original application, by paying the required fee in each case, and complying with the other requirements of the law, as in original applications. Each division of a re-issue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts. One or more divisions of a re-issue may be granted, though other divisions shall have been postponed or rejected. In all cases of applications for re-issues, the original claim is subject to re-examination, and may be revised and restricted in the same manner as in original applications.

The petition for re-issue must be signed and sworn to by the inventor if he be living, and must be accompanied with a certified copy of the abstract of title, giving the names of all assignees owning any undivided interest in the patent; and with the written assent of such assignees.

The applicant must also file with his petition a statement setting forth particularly the defects or insufficiencies in the specification which render the patent inoperative or invalid, and how such errors arose, and in cases where more was claimed and allowed than he was entitled to claim as new, such part or parts must be distinctly pointed out. At the same time the original patent must be surrendered, or if that be lost an affidavit to that effect and a certified copy of the patent. New drawings must also be furnished as in the case of an original application.

(248a.)

Form of Petition for Re-issue.

To the Commissioner of Patents:

Your petitioner, A. B., a citizen of the United States residing at L., in the County of M. and State of N. (or subject of, etc.), prays that he may be allowed to surrender the letters patent for an improvement in , granted to him , 188 , whereof he is now sole owner (or whereof C. D., on whose behalf and with whose assent this application is made, is now sole owner by assignment), and that letters patent may be issued to him (or the said C. D.) for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases. A. B.

Assent of Assignee to Re-issue.

The undersigned, assignee of the entire (or undivided) interest in the above-mentioned letters patent, hereby assents to the accompanying application.

C. D.

(249.)

Form of Oath to be Appended to Applications for Re-issue.

State of } ss.
County of }

A. B., the above-named petitioner, being duly sworn, deposes and says that he verily believes that his aforesaid letters patent are inoperative (or invalid or both) by reason of a defective (or insufficient) specification (or both, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new) and that the error arose by inadvertence (accident or mistake) without any fraudulent or deceptive intent; that he is the sole owner of said letters patent (or that E. F. is the sole owner of said letters patent, and that this application is made on the behalf and with the consent of the said E. F.) and that he verily believes himself to be the first and original inventor of the improvement set forth and claimed in this amended specification, and does not believe that the same was ever before known or used. A. B.

Sworn to and subscribed before me this day of 190 .

C. D.

(Title of office.)

Applications for re-issues will not be kept secret; and information respecting the same will be furnished upon inquiry, as well as copies of the proposed claims for publication.

DISCLAIMERS.

Where, by inadvertence, accident, or mistake, the original patent is too broad, a disclaimer may be filed either by the original patentee or by any assignee of the patent or of any sectional interest therein.

The following is a sufficient form for a disclaimer:

(250.)

Form for a Disclaimer.

TO THE COMMISSIONER OF PATENTS:

Your petitioner, A. B., a citizen of the United States, residing at L. in the County of M. and State of N. (or a subject of &c.) represents that in the matter of a certain improvement in , for which letters patent of the United States, No. , were granted to him (or to C. D.) on the day of he is (*here state the exact interest of the disclaimant; if assignee, set out book and page where assignment is recorded*) and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor.

Your petitioner therefore, hereby enters his disclaimer to that part of the claim in said specification which is in the following words, to wit:

Witness: A. B.

E. F.

EXTENSIONS.

No patents now in force can be extended except by a special act of Congress.

Such extensions are rarely granted, and therefore the rules of the office in reference to them are of too limited application to be inserted here.

DESIGNS.

Patents for Designs are provided for by section 4929 of the Revised Statutes of the United States, as follows:

"Any person, who by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may upon payment of the fee prescribed by law, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor."

Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may in his application elect.

The fee for a design patent for three and one-half years is ten dollars, for one for seven years fifteen dollars, and for fourteen years thirty dollars, payable in each case when the application is filed.

In all other cases in which fees are required the same rates are charged as in the case of patents for inventions or discoveries.

The proceedings on applications for patents for designs are substantially the same as in those for inventions or discoveries

The specification must distinctly point out the characteristic features of the design and carefully distinguish between what is old and what is claimed to be new.

When the design can be sufficiently represented by drawings or photographs, no model will be required.

When a photograph or engraving is employed for this purpose, it must be mounted on bristol board 10 by 15 inches in size, and properly signed and witnessed.

The applicant will be required to furnish ten extra copies of such photograph or engraving (not mounted) of a size not exceeding 7½ inches by 11.

Whenever the design is represented by a drawing made to conform to the rules laid down for drawings of mechanical inventions, but one copy need be furnished.

(251.)

Form of Application for Patents for Designs.

To the Commissioner of Patents:

Your petitioner, A. B., a citizen of the United States, residing at L., in the County of M. and State of N. (or subject, etc.), prays that letters patent may be granted to him for the term of years for the new and original design for , set forth in the annexed specification.

A. B.

(252.)

Form of Specification for Designs.

To all whom it may concern:

Be it known that I, A. B., a citizen of the United States, residing at L., in the County of M. and State of N., have invented and produced a new and original design for watch cases or lockets, of which the following is a specification, reference being had to the accompanying drawings forming part thereof.

Figure 1 is a sectional view of my newly designed case, Fig. 2 a side elevation of the same, and Fig. 3 an edge view, these three views being deemed necessary to fully illustrate my design.

Heretofore watch cases and lockets have been made which presented when viewed in elevation as in Fig. 2, a scalloped outline or periphery, some being made to imitate shells. In these the scallops extend entirely across from lid to lid, and in a watch case the center which holds the movements is also scalloped to correspond.

The leading feature of my design consists in a raised or "struck up" scalloped surface, the outlines of which, when viewed in elevation, as in Fig. 2, will fall entirely within the circular outline or circumference of the center.

A is the center of the case, which is circular in its general contour, and B B are the lids. These are also circular in their outer contour where they join the center, but have scallops, C C C, formed upon them substantially as represented in the several figures. The indented outline of the scalloped surface falls within the outer contour line of the case, thus presenting to the eye the combined effect of a smooth circular outline or center and an indented or scalloped outline within it.

I claim —

The design for a watch case or locket herein shown and described, the same consisting of the raised scallops, C C C, on the lid, forming an indented outline wholly within the circular outline of the edge of the lid and the center A.

A. B.

Witnesses:

C. D.

E. F.

The form of oath to accompany the petition is substantially the same as that used in cases of patents for inventions.

FOREIGN PATENTS.

The taking out of a patent in a foreign country does not prejudice a patent previously obtained here; nor does it prevent obtaining a patent here subsequently, if the invention has not been in public use in the United States for more than two years. When application is made for a patent for an invention which has been already patented abroad, the inventor will be required to make oath, that, according to the best of his knowledge and belief, the same has not been introduced into public and common use in the United States for more than two years prior to the application. An applicant who has obtained a foreign patent or patents, should state in what country or countries such patents have been obtained, and the dates and numbers thereof. The reason of this is, that the statute provides that the patent granted in this country shall expire with the foreign patent, or, if there be more than one, at the same time with that having the shortest unexpired term; and in no case can it be in force more than seventeen years.

CAVEATS.

Any citizen of the United States, or alien who has resided for one year last past in the United States, and has made oath of his intention to become a citizen thereof, can file a caveat in the secret archives of the patent office on the payment of a fee of ten dollars therefor. And if, at any time within one year thereafter, another person applies for a patent for the same invention, the caveator will be entitled to notice to file his application, and to go into interference with the applicant for the purpose of proving priority of invention, and obtaining the patent if he succeed. He must file his application within three months from the day on which the notice to him is deposited in the post-office at Washington, adding the regular time for the transmission of the same to him; and the day when the time for filing expires shall be mentioned in the notice or indorsed thereon. The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of filing the caveat; but he may renew his caveat at the end of one year by paying a second caveat fee of ten dollars, which will continue it in force for one year longer, and so on from year to year as long as the caveator may desire.

No caveat can be filed in the secret archives of the office unless accompanied by an oath of the caveator that he is a citizen of the United States, or that he is an alien and has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof; nor unless the applicant also states under oath that he believes himself the original inventor of the art, machine, or improvement set forth in his caveat.

A caveat need not contain as particular a description of the invention as is requisite in a specification; but still the description should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed.

Caveat papers cannot be withdrawn from the office nor undergo alteration after they have once been filed; but additional papers relative to the invention may be appended to the caveat (their date being noted), provided they are merely amendatory of the original caveat. In the case of filing papers supplementary to an original caveat, the right to notice in regard to the subject of those papers expires with the caveat; and any additional papers not relating to the invention first caveated will receive no notice. The caveator, or any person properly authorized by him, can at any time obtain copies of the caveat papers at the usual rates.

The caveat should be accompanied by drawings or sketches, which must be made on tracing muslin or paper which can be folded.

The following is a proper form of a caveat:

(254.)

Form of a Caveat.

To the Commissioner of Patents:

Be it known that I, A. B., a citizen of the United States, residing at , having invented an improvement in and desiring further to mature the same, file this my caveat therefor and pray protection of my right until I shall have matured my invention.

The following is a description of my newly invented , which is as full, clear, and exact as I am able at this time to give, reference being had to the drawing hereto annexed. (*Here insert a description of the invention, pointing out its objects and distinguishing characteristics.*)

A. B.

Witnesses,
C. D.,
E. F.

The oath of the caveator accompanying the caveat must set forth that he is a citizen of the United States, or, if he be an alien, that he has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof, and that he believes himself the original and first inventor of the art, machine, or improvement, set forth in his caveat.

ASSIGNMENTS AND GRANTS.

A patent may be assigned, either as to the whole interest or any undivided part thereof, by any instrument of writing. No particular form of words is necessary to constitute a valid assignment; nor need the instrument be sealed, witnessed, or acknowledged. A patent will, upon request, issue directly to the assignee or assignees, of the entire interest in any invention, or to the inventor and the assignee jointly, when an undivided part only of the entire interest has been conveyed. In every case where a patent issues or re-issues to an assignee, the assignment must be recorded at the Patent Office at least five days before the issue of the patent; and the specification must be sworn to by the inventor. Every assignment and every grant of an exclusive territorial right must be recorded in the Patent Office within three months from the execution thereof; otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice; but, if recorded after that time, it will protect the assignee, or grantee, against any such subsequent purchaser whose assignment or grant is not then on record.

The receipt of assignments is not generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to persons entitled to them.

(255.)

Form of Assignment of the Entire Interest in Letters Patent before obtaining the same, and to be Recorded preparatory thereto.

Whereas I, of in the County of and State of have invented certain new and useful improvements in ploughs, for which I am about to make application for letters patent of the United States; and whereas of has agreed to purchase from me all the right, title, and interest which I have, or may have, in and to the said invention, in consequence of the grant of letters patent therefor, and has paid to me, the said the sum of five thousand dollars, the receipt of which is hereby acknowledged: Now this indenture witnesseth, that for and in consideration of the said sum to me paid, I have assigned and transferred, and do hereby assign and transfer, to the said the full and exclusive right to all the improvements made by me, as fully set forth and described in the specification which I have prepared and executed under date of preparatory to the obtaining of letters patent therefor. And I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said as the assignee of my whole right and title thereto, for the sole use and behoof of the said and his legal representatives.

In Testimony Whereof, I have hereunto set my hand and affixed my seal this day of 19 .

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

(255a.)

Form of Assignment of Patent or of an Undivided Interest therein.

TO ALL WHOM IT MAY CONCERN:

Whereas of in the County of and State of did obtain letters patent of the United States for , which letters patent bear date and are numbered. (*If the assignment is made by an assignee add, and whereas is now sole owner of said letters patent, or of a one-half interest in said letters patent as the case may be.*)

And Whereas is desirous of acquiring an interest therein: Now this indenture witnesseth that in consideration of the sum of in hand paid, the receipt of which is hereby acknowledged, I, the said , have assigned, sold, and set over, and do by these presents assign, sell, and set over unto the said all (*or one-half, as the case may be*) the right, title, and interest I have in and to the said letters patent and the invention thereby secured.

The same to be held and enjoyed by the said for his own use and behoof, and for the use and behoof of his legal representatives to the full end of the term for which said letters were granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal this day of 19 .

(*Signature.*) (*Seal.*)

Sealed and Delivered in Presence of

(256.)

Form of a Grant of a Territorial Right in a Patent.

Whereas I, of in the County of and State of did obtain letters patent of the United States for which letters patent bear date the day of 18 ; and whereas of is desirous of acquiring an interest therein; Now this indenture witnesseth, that for and in consideration of the sum of two thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, I have granted, sold, and set over, and do hereby grant, sell, and set over, unto the said all the right, title, and interest which I have in the said invention, as secured to me by said letters patent, for, to, and in the several States of New York, New Jersey, and Pennsylvania, and in no other place or places; the same to be held and enjoyed by the said for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent are granted (if it is intended to grant for any extended term, then add — and for the term of any extension thereof), as fully and entirely as the same would have been held and enjoyed by me had this grant and sale not been made.

In Testimony Whereof, I hereunto set my hand and affix my seal this day of 19 .

(*Signature.*) (*Seal.*)

Sealed and Delivered in Presence of

LICENSES.

The patentee or any assignee of the patent or of any undivided interest therein may license others to practice the invention to any extent, and the grantee of a territorial interest may do the same within the limits of the territory granted to him.

Such licenses should be made in writing, but this is not absolutely essential.

The statute does not require that licenses should be recorded although it is common to do so.

No special form is prescribed for licenses, and their terms will vary according to the special contract between the parties.

The following forms, however, may be useful as guides:

License—Shop right.

In consideration of the sum of fifty dollars paid by the firm of S. J. & Co., of L., in the county of M. and State of N., I do hereby license and empower the said S. J. & Co., to manufacture in said L., the improvement in cotton seed planters, for which letters patent of the United States No. 71,846 were granted to me, November 13, 1898, and to sell the machines so manufactured throughout the United States, to the full end of the term for which said letters patent are granted.

Signed at L. aforesaid this 22d day of April, 19 .

A. B.

License—not Exclusive—with Royalty.

This agreement, made this 12th day of September, 1900, between A. B. of L., in the County of M. and State of N., party of the first part, and C. D. & Co. of O., in the County of R. and State of S., party of the second part, witnesseth, that whereas letters patent of the United States No. 87,540, for an improvement in horse rakes, were granted to the party of the first part, dated October 4, 1898, and whereas the party of the second part is desirous of manufacturing horse rakes containing said patented improvement. Now therefore the parties have agreed as follows:

1. The party of the first part hereby licenses and empowers the party of the second part, subject to the conditions hereinafter named, to the end of the term for which said letters patent were granted, to manufacture horse rakes containing the patented improvements and to sell the same within the United States.

2. The party of the second part agrees to make full and true returns to the party of the first part, upon the first days of July and January in each year, of all horse rakes containing the patented improvement manufactured by them.

3. The party of the second part agrees to pay to the party of the first part five dollars as a license fee upon every horse rake manufactured by said party of the second part containing the patented improvements, said payments to be made within ten days after the days above provided for the semi-annual returns.

4. Upon failure of the party of the second part to make returns or to make payment of license fees, as herein provided for, thirty days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of

the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named have hereunto set their hands the day and year first above written.

A. B.
C. D. & Co.

THE OFFICE FEES, AND HOW PAYABLE.

Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance. For the sake of uniformity and convenience, the remaining fees are required to be paid in the same manner; that is to say, before the labor is performed for which they are to be received in payment.

The following is the tariff of fees established by law:

On filing application for design patent, 3½ years,	$10.00
" " " " 7 years,	15.00
" " " " 14 years,	30.00
On filing a caveat,	10.00
On filing an application for a patent for an invention,	15.00
On issuing each original patent for an invention,	20.00
On filing a disclaimer,	10.00
On every application for a re-issue,	30.00
On filing an appeal from a primary examiner to examiners-in-chief,	10.00
On filing an appeal to the Commissioner from examiners-in-chief,	20.00
On depositing a trade-mark for registration,	25.00
On every copy of a patent or other instrument, except copies of printed patents, for every 100 words,	.10
On every copy of drawing,	the cost of having it made.
For recording every assignment of 300 words or under,	1.00
For recording every assignment, if over 300 and not over 1,000 words,	2.00
For recording every assignment, if over 1,000 words,	3.00

Uncertified printed copies of the specifications and drawings of any patent, and copies of the drawings of any patent if in print, are furnished by the Office at five cents each.

The final fee on issuing a patent must be paid within six months after the time at which the patent was allowed, and notice thereof sent to the applicant or his agent. And if the final fee for such patent be not paid within that time, the patent will be withheld, and the invention therein described become public property as against the applicant therefor, unless he shall file a new application therefor within two years from the date of the allowance of the original application.

The money for the payment of fees may be paid to the Commissioner or deposited with an Assistant Treasurer of the United States, or other officer authorized to receive the same, taking his certificate, and remitting the same to the Office, directed to the Commissioner of Patents. When this cannot be done without inconvenience, the money may be remitted by mail; and in every case the letter should state the exact amount enclosed. Letters containing money should be registered at the post-office where mailed.

In no case should money be enclosed with models.

TAKING AND TRANSMITTING TESTIMONY.

In interferences and other contested cases, the testimony of witnesses is taken on oath by written depositions in the presence of a magistrate, by whom the questions and answers are written down and afterwards transmitted under seal to the Commissioner of Patents.

Due notice must be given by the party examining the witness to the other party, in order that he may be present personally or by attorney, and cross-examine.

The rules established by the Office, in reference to the taking and transmitting of evidence in such cases, will be furnished gratis on application to the Commissioner.

THE DOMINION OF CANADA.

The Patent Law of the Dominion of Canada was enacted in 1872. It is long and minute; but in its leading principles and purpose it resembles the law of the United States. The principal differences are as follows:

The Patent Office is a part of the Department of Agriculture. There is a Commissioner of Patents, and applications for any purpose connected with patents must be made to him.

No inventor can have a patent if his invention has been in public use or on sale more than a year in Canada, previous to his application, with the consent of the inventor. Nor if a patent for the same exists in another country more than twelve months previous to application in Canada. If, during said twelve months, any person begins to manufacture the article in Canada, he shall have the right to continue the same. Applicant must elect a domicil in Canada for the purposes of this patent, and declare the same in his petition. The article to be sold under this patent must be made in Canada, and not imported into it; and the manufacture must begin within two years from the granting of the patent; but these two years may be extended by the Commissioner. The patent right is granted for five, ten, or fifteen years, at the option of the applicant.

TRADE-MARKS.

By the common law a merchant or manufacturer is entitled to the exclusive use of a "trade mark" to designate his goods, provided he has used it so long that it has become generally recognized as his.

The trade-mark may consist of words, letters, figures, or drawings, or a combination of two or more of them.

It must, however, indicate only the origin or ownership of the goods to which it is applied, and not be descriptive of their character, quality, or composition.

Thus, for example, a miller may mark his flour with the figure of an eagle or with the name of his mill, and these marks will after a time be recognized as indicating that the flour so marked is made by him or at his mill.

But he cannot appropriate to his exclusive use such words as "snow white," "superfine," "family flour," or any other descriptive term, as any other person manufacturing a similar article has a right to describe it by any appropriate language.

So the name of the place where a manufacturer carries on business cannot be so appropriated as to prevent others in the same place from using it in connection with their goods.

No one will, however, be permitted to represent his goods as the goods of another, by imitating the latter's labels, descriptions, or peculiar methods of putting up his goods, even if the latter do not strictly constitute a trade-mark; and in all cases of this kind it is enough for the plaintiff to show that the imitation is sufficiently close as to deceive the public, although there be differences in the details.

If, however, the plaintiff is himself defrauding the public by falsely describing the character, quality, or composition of his goods, or when the articles themselves are injurious in their character, he can claim no assistance from a court of equity.

A trade-mark may be sold with the business with which it is connected or the factory where the goods are made to which it is applied. In the settlement of partnership affairs, or in connection with the sale of the good will of a business, it is often an item of great value.

(The following rules are derived from the U. S. Statutes of 1905, as amended by those of 1907.)

The trade-mark department at Washington is a branch of the Patent Office. All business relating to trade-marks should be carried on in writing with the "Commissioner of Patents," and remittances should be made by money order, check or draft to his order in advance. Money paid in excess of charges will be refunded.

A trade-mark may be registered by any person, firm, corporation or association, domiciled within the territory of the United States, or residing or located in any foreign country which has treaty agreements with the United States.

No mark which distinguishes the goods of one owner from the goods of another will be refused registration, unless such mark comprises immoral or scandalous matter, or represents the flag or coat of arms of the United States or of any State, municipality or foreign nation, or any emblem of a fraternal society.

If a trade-mark is identical with one now in use, or so nearly alike to one in use that it will tend to confuse the public, registration will be refused. No trade-mark which consists merely in the name of an individual, firm, corporation or association, not *written, printed, impressed,* or *woven* in some particular or distinctive manner or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, will be registered. No portrait of a living individual may be registered as a trade-mark, except by the consent of such individual, evidenced by an instrument in writing. *Nothing, however, shall prevent the registration of any mark which has been in actual and exclusive use as a trade-mark for ten years next preceding February 20, 1905.* The part underscored is the most important amendment of recent years, as by it, trade-marks which, by reason of being descriptive, etc., could not heretofore be registered, may now be registered as valid trade-marks, provided they have been in use for the period as specified.

Registration of a trade-mark previously registered in a foreign country, may be had in the United States, provided the application is filed in this country within four months from the date on which the application was first filed in such foreign country. Where an applicant for a trade-mark does not reside in the United States, he must designate by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings may be served.

In general, an application for a trade-mark consists of (*a*) a petition; (*b*) a statement of the name, residence, citizenship of the party applying; (*c*) the length of time the trade-mark has been used; (*d*) the class of merchandise to which the trade-mark is appropriated; (*e*) description of the trade-mark itself; (*f*) where applied to the goods; (*g*) a drawing of the trade-mark as actually used on the goods, signed by applicant or attorney; (*h*) five specimens of facsimiles of the trade-mark as actually used on the goods. The application must be written on one side of the paper only, and accompanied by a written declaration under oath, that the applicant believes himself to be the owner of the trade-mark, and that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use the trade-mark either in the identical form or any such other resemblance thereof as might be calculated to deceive, and that such trade-mark is used in commerce among the several States or with foreign nations or with the Indian Tribes, and that the description, drawing and specimens or facsimiles truly represent the trade-mark sought to be registered.

The drawing must be made in India ink on pure white, smooth paper equal to two-sheet Bristol board in thickness. The sheets on which a drawing is made must be exactly 10 by 15 inches.

A marginal line should be drawn around this page, one inch from the edge, leaving an enclosure 8 by 13 inches in which all the drawing and writing must be made. The name of the owner or attorney must be placed on the lower right-hand corner inside the margin. Drawings must be sent flat. The Patent Office, at the request of applicants, will furnish drawings at cost.

The statements in the application may be amended to correct informalities or to avoid objections made by the Office, but all such amendments must be made on sheets of paper separate from the papers previously filed, and specifying exactly the amendments to be made.

When application is made for the registration of a trade-mark, the Commissioner causes an examination to be made, and if the examiner finds the applicant entitled to his trade-mark, the Commissioner has it published at least once in the official *Gazette* of the Patent Office. Any opposition to the trade-mark should be made within thirty days from this publication. If no opposition is made, the Commissioner will issue a certificate of registration. Should the Commissioner decide not to register the proposed trade-mark, or should there be opposition to its registration, he will immediately notify the applicant that registration has been refused and give the reasons for doing so.

An appeal may be taken from the decision of the examiner denying the registration of a trade-mark to the Commissioner, and from the Commissioner to the Court of Appeals for the District of Columbia.

In case of conflicting applications for registration of a trade-mark, or in any dispute as to the right to use the same, the Office will declare an interference, and the proceedings for interference between applications for patents will be followed as nearly as practicable. Any person who believes he would be damaged by the registration of a trade-mark can oppose the same, by filing in duplicate a written notice of opposition verified by the person under oath. Any person believing himself injured by the registration of a trade-mark can apply to have such trade-mark canceled, such application to be in duplicate under oath.

The term of a trade-mark is twenty years, with privilege of renewal for the same term on an application made not more than six months before its expiration. Those trade-marks granted before April 1, 1905, remain in force for the original term granted, and then may be renewed for 20-year terms as with original applications.

Trade-marks may be sold and assigned like the good-will of a business, but the sale or assignment must be made by instrument in writing duly acknowledged according to the laws of the country or State in which the same is executed. The assignment must be recorded within three months from the date.

A register of a trade-mark must give notice to the public that a trade-mark is registered, either by affixing thereon the words

"Registered in U. S. Patent Office," or "Reg. U. S. Pat. Off.," or, when that cannot be done, by putting same words on a label placed on the packages or receptacles. No suit can be brought for infringement of a trade-mark unless this public notice is given, or unless proof is offered that the defendant was duly notified of infringement and continued to use the same after such notice.

The Circuit and Territorial Courts of the United States and the Supreme Court of the District of Columbia have original jurisdiction, and the Circuit Courts of Appeal of the United States and the Court of Appeals of the District of Columbia have appellate jurisdiction, of all suits at law or in equity representing trade-marks registered under this act, without regard to the amount in controversy. Writs of certiorari follow the rules provided for patent cases. Recovery on a judgment shall include profit accruing to defendant and damages sustained by complainant. The several courts may grant injunctions pending suits, and may increase said judgment not exceeding three times the amount of the verdict, and may order copies and representations of infringing trade-marks destroyed.

In assessing profits, the plaintiff is required to prove the defendant's sales only. The defendant, on the other hand, must prove all elements of cost which are claimed.

Imported goods bearing foreign trade-marks injuriously imitating United States trade-marks shall be refused entry at all United States custom-houses; and to prevent their entry, each owner of a trade-mark should lodge with the Commissioner of Patents a copy and description of it, copies of which will be forwarded to each collector or other proper officer of customs.

The principal fees connected with such registration are as follows:

On filing each original application for registration,	$10.00
On filing each application for renewal of registration,	10.00
On filing notice of opposition to registration,	10.00
On appeal from the examiner in charge to the Commissioner of Patents,	15.00
For recording every assignment, agreement, power of attorney, or other paper, of 300 words or less,	1.00
Do., of more than 300 words and less than 1,000 words,	2.00

Petition.

To the Commissioner of Patents:

The undersigned presents herewith a drawing and five specimens (or facsimiles) of his trade-mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such cases made and provided.

Dated: , 19 . (Signature)......................

Statement for an Individual.

To all whom it may concern:

Be it known that I, , a citizen (or subject as the case may be) of the , residing at , and doing business at No. Street, in said city, have adopted for my use a trade-mark of which the following is a description:

My trade-mark consists of

The trade-mark has been continuously used in my business since

The class of merchandise to which the trade-mark is appropriated is , and the particular description of goods comprised in said class upon which I use said trade-mark is

The trade-mark is displayed on the package containing the goods, by placing thereon a printed label on which the same is shown (or state other modes of application to the goods).

(Signature)......................

Declaration for an Individual.

State of } ss:
County of }

, being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by him in commerce among the several States of the United States and (or) between the United States and foreign nations or Indian tribes, or both as the case may be; and that the description and specimens (or facsimiles) presented truly represent the trade-mark sought to be registered.

(Signature)......................

Subscribed and sworn to before me, a this day of , 19

(Signature)......................

(Official Character.)

Statement for a Firm.

To all whom it may concern:

Be it known that we, , a firm domiciled in , county of , State of , and doing business at No. , citizens (or subjects, as the case may be) of , have adopted for our use a trade-mark, of which the following is a description:

Our trade-mark consists of

The trade-mark has been continuously used in our business since

The class of merchandise to which the trade-mark is appropriated is , and the particular description of goods comprised in said class upon which said trade-mark is used is

The trade-mark is displayed on the packages containing the goods, by placing thereon a printed label on which the same is shown (or state other modes of application to the goods).

(Signature).......................
By.......................
A member of the firm.

PRINTS AND LABELS.

By an Act of Congress, approved June 18, 1874 (18 Statutes at Large, p. 78), provision is made for the registry of prints and labels in the Patent Office. For this purpose these terms are construed as synonymous, and are defined as any device, picture, word or words, figure or figures (not a trade-mark), impressed or stamped directly upon the articles of manufacture, or upon a slip or piece of paper or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, or packages containing them, to indicate the contents of the package, the name of the manufacturer, or the place of manufacture, the quality of goods, directions for use, etc.

It has been held that the application for registry must be made before the print or label is actually used; but no examination of its novelty need be made.

The application must be accompanied by ten copies of the print or label, and the registry fee of six dollars must be paid at the time of filing.

Form of Application for Registration of Prints and Labels.

To the Commissioner of Patents:

The undersigned, A. B. of , and a citizen of the United States (*or resident therein, as the case may be*), hereby furnishes ten copies of a label (or print) to be used for , of which he is the sole proprietor. The title of said label (or print) is , and the said label (or print) consists of the words and figures as follows, to wit:

And he hereby requests that the said label (or print) be registered in the Patent Office, in accordance with the Act of Congress to that effect, approved June 18, 1874. A. B., *Proprietor.*

The certificate of registration will continue in force for twenty-eight years.

The benefits of this act were originally confined to citizens or residents of the United States; but have been extended by treaties to British, German, Italian, and Belgian subjects.

CHAPTER XXXIV.

THE LAW OF COPYRIGHT.

The law now in force in the United States is as follows:

SECTION 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the Joint Committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

SEC. 4949. The seal provided for the office of the librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office, and to be used in evidence, shall be authenticated.

SEC. 4950. The librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

SEC. 4951. The librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

SEC. 4952. Any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or translate their own works.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

SEC. 4954. The author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, or his widow or children if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

SEC. 4955. Copyrights shall be assignable in law by any instrument of writing, and such assignment shall be recorded in the office of the librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

SEC. 4956. No person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or model or design for a work of the fine arts, for which he desires a copyright; nor unless he shall also, within ten days from the publication thereof, deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, two copies of such copyright book or other article, or, in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same.

SEC. 4957. The librarian of Congress shall record the name of such copyright book, or other article, forthwith in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the —— day of ——, ——, A. B., of ——, hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be, or description of the article,) the title or description of which is in the following words, to wit: (here insert the title or description,) the right whereof he claims as author, (originator, or proprietor, as the case may be,) in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the librarian of Congress, to the proprietor whenever he shall require it.

SEC. 4958. The librarian of Congress shall receive from the persons to whom the services designated are rendered, the following fees: 1. For recording the title or description of any copyright book or other article, fifty cents. 2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents. 3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar. 4. For every copy of an assignment, one dollar. All fees so received shall be paid into the treasury of the United States.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver, or deposit in the mail, either of the published copies, or description, or photograph, required by Sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of Congress, in the year ———, by A. B., in the office of the librarian of Congress, at Washington;" or, at his option, the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B." (For additional copyright matter, see amendment on page 700.)

SEC. 4953. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty, and one-half for the use of the United States.

SEC. 4964. Every person who, after the recording of the title of any book as provided by this chapter, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in the presence of two or more witnesses, print, publish, or import, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

SEC. 4965. If any person, after the recording of the title of any map chart, musical composition, print, cut, engraving, photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model, or design intended to be perfected and executed as a work of the fine arts, as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States.

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor; such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, (if such author or proprietor is a citizen of the United States, or resident therein,) shall be liable to the author or proprietor for all damages occasioned by such injury.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

SEC. 4969. In all actions arising under the laws respecting copyrights the defendant may plead the general issue, and give the special matter in evidence.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

SEC. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

By the Act of June 18, 1874, it is provided that in the construction of this act, the words "engraving," "cut," and "print," shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

SEC. 4962, as amended by the Act of Aug. 1, 1882, provides "that manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright, may put the copyright mark prescribed by R. S., § 4962, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers', merchants', or trade-marks thereon."

The Copyright Law of the Dominion of Canada closely resembles that of the United States.

A copyright may be taken out by "any person resident in Canada, or any person being a British subject, and resident in Great Britain or Ireland." The book must be printed and published in Canada.

I subjoin two forms of agreement between authors holding copyrights, with publishers, for the publication of the book. I add a form of assignment of copyright.

(260.)

Agreement between Author and Publisher.--Short Form.

This Agreement, Made this day of in the year 19 by and between (*name of author*) and (*name of publisher*) witnesseth as follows:

The said (*name of author*) being now preparing a work, to be called (*or on the subject of*) to be in volume hereby agrees and promises to complete the same for the press as rapidly as practicable, and to sell to the same (*name of the publisher*) for the sum of dollars, to be paid as hereinafter mentioned, the exclusive right of printing, publishing, and selling the first edition thereof, to consist of copies. The copyright of said work to be secured and retained by said (*name of author*) as author and proprietor.

And the said (*name of publisher*) hereby agrees and promises to publish said edition of copies, and to pay to said (*name of author*) the said sum of dollars, by their promissory, negotiable notes, payable at average credit of months from the day of publication of said edition; and also to give him copies of said work, for presentation.

Witness our hands, in duplicate, this day of

(*Signature of author.*)
(*Signature of publisher.*)

(261.)

Agreement between Author and Publishers.—Fuller Form

Articles of Agreement, Made this day of A.D. 19 by and between of the first part, and of State of booksellers and publishers, of the second part, witnesseth, That the said (*name of the author*) in consideration of the agreements of the said (*name of publishers*) hereinafter contained, hereby agrees with them and their representatives and assigns that he will deliver to them on or before the day of A.D. 18 the manuscript of a book now in course of preparation by him, to be entitled said manuscript to be properly prepared for the press, and to be sufficient in amount for volume of not less than pages, similar to those of that he will secure in his own name a good and valid copyright thereof for the United States, and any renewals or extensions of such copyright to which he may hereafter be entitled, and will defend the same from all infringements and adverse claims, and will save the said and their representatives and assigns, harmless and indemnified from all such infringements and claims, and from all damage, costs, and expenses arising to them by reason thereof: that he will license and allow the said and their representatives and assigns, but no other party or parties, to print, publish, and sell the aforesaid book, and any revisions of the same, during the continuance of any copyrights or renewals thereof which he may obtain therefor: provided, however, that the said and their representatives and assigns shall in substantial good faith keep and perform their agreements hereinafter contained: and that during the continuance of the exclusive rights hereby granted, he will revise said book as occasion may require, and will with all reasonable diligence and speed superintend in the usual manner of authors the printing of all editions thereof; and will not prepare, edit, or cause to be published, in his name or otherwise, anything which may injure or interfere with the sale of the aforesaid book.

And the said (*name of the publishers*) in consideration of the foregoing agreements of the said author of the aforesaid book, hereby agree on their part that they will, upon the delivery to them of the manuscript thereof as aforesaid, proceed at once to print and publish an edition of said book, of at least copies, of which they will deliver to the said author for his own use without charge: that they will subsequently, from time to time, during the continuance of their enjoyment of the exclusive rights herein granted them, print and publish such other editions of said book as the demand for the same may require, copies of each of which they will deliver to said author for his own use without charge; that they will use their best exertions to secure the speedy sale of all such editions published by them as aforesaid; and that, upon the publication of each and every edition of said book, they will pay unto the said author, or his representatives or assigns, a sum equal to upon each and every copy of which said edition shall consist (excepting, however, said copies to be given to said author as aforesaid, and such other copies as may be used for presentation to editors and others for the purpose of obtaining reviews and notices, or otherwise to promote the sale of said book), which said sum shall be paid as follows (*state the manner and times of payment, as by cash or notes*) but from any sum so to be paid as aforesaid shall first be deducted the cost of any alterations or corrections, exceeding ten per cent. of the cost of first setting up the type, made by the said author in said book after the portion altered or corrected is in type.

In Witness Whereof, The said parties have hereto, and to another instrument of like tenor, set their hands the day and year first above written.

(*Signature of author.*)
(*Signature of publishers.*)

(*Witnesses.*)

(262.)

An Assignment of a Copyright.

To all whom it may Concern: Whereas I, (*name of assignor*) of in the County of and State of did obtain a copyright from the United States for a work entitled and the certificate of said copyright bears date A.D. eighteen hundred and

Now this Deed Witnesseth, That for a valuable consideration, viz.: to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and by these presents do assign, sell, and set over unto the said (*name of assignee*) all the right, title, and interest I have in the above book (*or design, etc.*) as secured to me by said copyright. The same to be held and enjoyed by the said (*name of assignee*) for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said copyright was issued, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, this day of in the year of our Lord one thousand nine hundred and

(*Signature.*) (*Seal.*)

Sealed and Delivered in Presence of

CHAPTER XXXV.

MEANS PROVIDED FOR THE RECOVERY AND COLLECTION OF DEBTS.

1. Arrest and Imprisonment.—In many States, no person can be arrested or imprisoned for debt. In California no female, and in Louisiana no female, and no person who has not a domicil in the State, and in Ohio no female, nor any officer or soldier of the Revolutionary army, can be arrested or imprisoned for debt. In all the States, the *intention* of the law is to limit imprisonment to those cases in which either fraud was committed in the contraction of the debt, or the debtor intends to abscond out of the reach of process. The provisions to effect this are very various. Generally, the plaintiff must file in the clerk's office, or indorse upon the writ, an affidavit of the facts on which he grounds the right of arrest. In some of the States, provision is made for the imprisonment on execution of a debtor who can be found to possess, and refuses to surrender, property or interest, real or personal, which might be made available for the payment of his debts.

2. The Trustee Process.—The trustee process, or garnishee process, or process of foreign attachment,—by all which names it is known,—is now nearly or quite universal. It is substantially this: A owes B a debt; but A has no property in his hands or possession which B can get at; but A has deposited in the hands of C, goods, or property, or credits of some kind, or A has a valid claim against C for services rendered, or money loaned, or goods sold, or something else; and this B gets by suing A, *not* with a common writ, but with a *trustee* writ, so called, in which he declares that C is the *trustee* of A, for property, etc.; and on this writ, if B recovers payment against A, he will have an execution against all A's property in the hands of C, and all A's valid demands against C. But C, when notified, may come into court, and, in answer to all questions put to him, declare that he (C) has no property in his hands belonging to A, and that he does not owe A anything. And then the plaintiff may shape the questions as he pleases, to draw out the truth.

No one is adjudged trustee, or made to pay to the creditor the debt due to the debtor, if he has given a negotiable note for it, because he might have to pay it again to an honest indorsee. Nor if the debt is not certainly due; nor, generally, if it is due from the trustee in any official capacity, which will require him to account over for the money in his hands; nor if the debtor has recovered a judgment against the trustee, on which execution may issue.

The laws of the British Provinces for the collection of debts are similar in substance and purpose to those of the United States, with similar provisions against abuse or oppression.

3. THE HOMESTEAD.—In most of the States, a *homestead* is protected from creditors, and exempted from all attachment or execution, excepting in some States for taxes, or wages of labor to a certain amount.

Various provisions are made in each of these States to combine a due protection of the creditor with proper prevention of fraud. The most common means are by requiring that "the homestead" should be distinctly defined and set apart, and in many cases by the additional requirement, that the description and location of it should be put on public record.

In all the States there are also exemption laws. These provide very generally that bed and bedding and other necessary furniture, needful clothing, a Bible and school-books, and a certain amount of food and fuel, shall not be taken on attachment or execution. In some States, the tools of a trade, the uniform, arms, and equipments of soldiers or officers in the militia, the family burying-vault and gravestones, a team or yoke of oxen, bees with their hives and honey, a boat for fishing, etc., are exempted. These statutes often enumerate the articles exempted quite minutely, and then add, that necessary articles to a certain amount of value, usually one or two hundred dollars, are also exempted.

We give annexed to this chapter an Abstract of the Laws of all the States relating to the collection of debts.

ABSTRACT OF LAWS RELATING TO THE COLLECTION OF DEBTS

INCLUDING ACTIONS, ATTACHMENT, ARREST, GARNISHMENT, JUDGMENT, EXEMPTIONS, AND HOMESTEAD.

ALABAMA.—Actions. Civil actions are begun by service of summons, issued by the clerk of court, and accompanied by the complaint of the plaintiff. All actions on contracts for the payment of money may be joined in one.

Attachment may be levied on any real estate, or personal property, or by garnishment. It may issue, (1) to enforce the collection of any debt, (2) for any money demand, (3) to recover damages for the breach of any contract, or, (4) when the action sounds in damages merely, an affidavit by the plaintiff that the defendant resides out of the State, or has absconded, or has secreted himself, or is about to remove, or has or is about to dispose of his property fraudulently. Affidavit must set forth amount of debt or demand, that it is justly due and that attachment is not for purpose of harassing defendant. Plaintiff must also give bond to defendant to prosecute attachment to effect, and pay all damages sustained by wrongful suing out of attachment.

Arrest is not allowed under the constitution for debt.

Garnishment. The judgment creditor in any action may obtain a process of garnishment against any person supposed to be indebted to the defendant, and the plaintiff may obtain such process when a summons and complaint have issued in any case upon giving bond.

Judgment is a lien for ten years, after filing a certificate of the clerk of the court in the office of the judge of probate of the county where it was obtained.

Stay Law. In actions before a justice of the peace defendant may, at any time before execution is issued, stay the issue thereof thirty days, if the judgment be less than twenty dollars, or sixty days if over twenty dollars, by giving a bond with surety in double the amount of the judgment. In cases in the Circuit Court execution can be stayed only by appeal to the Supreme Court and giving bond.

Exemptions. Personal property, to be selected by the debtor, to the value of one thousand dollars, is exempt from sale on execution, or other process of court, also the homestead of the debtor, not exceeding one hundred and sixty acres and not exceeding two thousand dollars in value, not in any city, town, or village, or in lieu thereof, any lot in any city, town, or village with the buildings thereon owned and occupied by the debtor, not exceeding two thousand dollars in value. Also are exempt, lots in cemeteries, pew or seat in church, proper wearing apparel, family portraits, books used in the family, and the wages or salaries of laborers or employes, for personal service, not exceeding twenty-five dollars per month.

ARIZONA.—Actions. There is but one form of civil action. This is commenced by filing a complaint with the clerk of the court and taking out a summons. Actions must be brought in the name of the real party in interest. If the plaintiff be a non-resident, defendant may require security for costs.

Attachment. Will issue on filing with the clerk on affidavit setting forth that defendant is justly indebted to plaintiff and the amount, also that defendant is a non-resident or a foreign corporation, or that he is about to remove permanently from the territory, and has refused to pay or secure the debt, or that he secretes himself so that process cannot be served on him, or that he has secreted or is about to secrete his property for the purpose of defrauding creditors, or that he is about to remove his property from the jurisdiction of the court without leaving enough to satisfy his debts, or from the county to defraud creditors, or that he has disposed or is about to dispose of his property to defraud creditors and that he is about to convert his property into money to place it beyond reach of creditors, or that the debt was due for property obtained under false pretenses, and also that the attachment is not sued out to injure or harass defendant, and that plaintiff will probably lose his debt unless attachment issues. Plaintiff must give bond with sureties to prosecute suit and for damages and costs in case attachment was wrongfully obtained.

ARREST — not authorized for debt. But every debtor who fraudulently removes from territory or fraudulently conceals or disposes of property with intent to defraud or hinder creditors is punishable by fine and imprisonment.

GARNISHMENT. Writ issues on plaintiff's giving bond with two sureties to prosecute suit to effect and to pay all costs and damages in case writ is wrongfully sued out, and filing affidavit showing either that an original attachment has been issued, or that debt is just, due, and unpaid and that defendant has not property sufficient to satisfy debt, and that the garnishment is not sued out to injure either defendant or garnishee; or that plaintiff has a judgment and that defendant has not property to satisfy it; and further, that the garnishee is indebted to defendant or has effects of defendant, or that garnishee is a joint stock company and defendant owns shares or some interest therein.

JUDGMENT is a lien for two years on all real estate owned by the defendant in the county where the judgment is rendered or where a transcript of the same has been filed.

STAY LAW. There is no stay of execution except in case of appeal.

EXEMPTIONS. To every head of a family a homestead not exceeding twenty-five hundred dollars in value; personal property to the value of five hundred dollars to be selected by the debtor, and earnings for personal services for thirty days preceding the levy.

ARKANSAS.— ACTIONS. Forms of actions existing before the adoption of the code are abolished, and there is now one form of action for private rights, called a *civil action*. The civil action is begun by filing with the clerk of the court a complaint and causing a summons to issue thereon. Several causes of action may be joined in the same complaint.

ATTACHMENT. The plaintiff may have an attachment for the recovery of money, including damages, when the defendant is a non-resident of the State; or has been absent from the State four months; or has departed with intent to defraud his creditors; or has left county to avoid service of summons, or so conceals himself that summons cannot be served on him, or has removed his property from the State, or is about to do so, not leaving enough to satisfy the claims of creditors; or has disposed of his property, or is about to do so with fraudulent intent to cheat, hinder, or delay his creditors. An order of attachment is made by the clerk of the court on the filing by the plaintiff of an affidavit showing the nature and amount of the plaintiff's claim, that it is just, and the existence of one of the grounds of attachment above mentioned, and filing a bond of indemnity to the defendant.

ARREST. The defendant in a civil action may be arrested on filing by the plaintiff with the clerk of the court, of an affidavit showing the nature of the claim, and charging the defendant with fraud in contracting the debt, that it is a just claim, and the amount expected to be recovered, and that the affiant believes that the defendant is about to depart from the State, and has concealed his property with the intent to defraud his creditors, or that he has property and is about to depart from the State without leaving enough to satisfy the plaintiff's claim.

Garnishment. Process of garnishment may issue whenever the plaintiff believes that any person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits, or effects belonging to the defendant.

Judgment rendered by the Circuit Court is a lien on the real estate of the defendant lying in the county for which the court is held, and the lien continues for three years.

Judgment rendered by the Supreme Court or by a justice of the peace becomes a lien on filing a transcript with the clerk of the Circuit Court.

Stay Law. Execution may be stayed six months, when the judgment is a decree for money, by giving a bond with good surety, except in actions against a collecting officer, attorney, or agent, or by a surety against his principal, or in a suit brought to enforce a vendor's or mortgagee's lien.

Exemptions. Personal property of a person unmarried and not the head of a family to the value of two hundred dollars, in addition to wearing apparel. Personal property of a person married or the head of a family to the value of five hundred dollars, in addition to wearing apparel. The homestead of a married man or the head of a family, except on judgments for the purchase money, or to enforce specific liens against the property, or for debts due in a fiduciary capacity. Such homestead, if outside of a town or village, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, occupied as a residence, in all not exceeding in value twenty-five hundred dollars, or not less than eighty acres without regard to value. If within a city, town, or village and owned and occupied as a residence, it shall consist of not exceeding one acre of land with improvements, not in all exceeding in value twenty-five hundred dollars, or not less than a quarter of an acre without regard to value.

CALIFORNIA.—Actions. There is only one form of action for private remedies, which is commenced by filing a complaint, and issuing a summons thereon, directed to the defendant.

Attachment. A writ of attachment may issue, in actions on contracts for the direct payment of money made or payable in the State, and not secured by mortgage or otherwise, or where the security has become valueless, and in actions of contract against a defendant residing out of the State, on filing with the clerk of the court an affidavit that the defendant is actually indebted to the plaintiff, stating the amount due, and also that the action is one of those above specified, and filing a bond of indemnity to the defendant.

Arrest. The defendant may be arrested in an action for the recovery of money or damages, when he is about to leave the State with intent to defraud his creditors or in an action to recover possession of personal property when the property has been fraudulently concealed or disposed of and cannot be found, or when the defendant was guilty of fraud in contracting the debt, or of embezzlement or fraudulent misapplication of money or property, or of misconduct or neglect in office, or in professional employment, or of willful violation of duty, or where the defendant has removed or disposed of his property with intent to defraud his creditors. The order for arrest is obtained from a judge of the court, on affidavit of one or more of the above causes, and furnishing security to defendant for damages in case the arrest proves unlawful. No female can be arrested in any civil action.

Garnishment. Debts due the defendant, and credits or personal property of the defendant in the hands of a third party may be attached by serving a copy of the writ, and a notice that the debts, credits, or personal property are attached.

JUDGMENT is a lien on real property of the debtor, not exempt from being taken on execution, which is situated in the county where the action was brought, and becomes a lien on real estate in other counties by filing a transscript of such judgment in the several counties. The lien continues for five years.

STAY LAW. The power of staying execution for a reasonable time is discretionary with the court. An appeal, accompanied by sufficient security, operates as a stay.

EXEMPTIONS. Chairs, tables, desks, and books to the value of two hundred dollars, necessary household furniture, including one sewing machine and one piano, stoves, stovepipe, and utensils, wearing apparel, beds, bedding, and bedsteads, family portraits and pictures painted by any member of the family, provisions and fuel actually provided for three months, three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; farm utensils not exceeding one thousand dollars in value, two oxen, or two horses, or two mules, and harness, one cart or buggy and two wagons, and food for said animals for one month, seed, grain, or vegetables for sowing, not exceeding in value two hundred dollars; and seventy-five bee-hives, and one horse and vehicle belonging to any person who is maimed or crippled, the same being necessary to his business; tools of mechanics or artisans; the office furniture, records, and seal of a notary public; the instruments of surgeons, dentists, physicians, surveyors, with their professional libraries and office furniture; the professional libraries and office furniture of lawyers, judges, ministers, editors, school and music teachers, and the indexes, abstracts, books, papers, maps, and office furniture of searchers of records necessary to be used in their profession, instruments actually used by music teachers in giving instructions, also typewriters used by owner in making his living, also one bicycle. The cabin of a miner, not exceeding five hundred dollars in value, with all the implements and gear necessary for his business, not exceeding five hundred dollars in value, with two horses, mules, or oxen, and harness necessary to operate the mine, and food for the same for one month, and the miner's claim worked by him, not exceeding one thousand dollars in value. Two oxen, mules, or horses, and harness, with food for the same for one month, and the cart or other vehicle by which carters, hackmen, peddlers, etc., habitually earn their living, one horse, vehicle, and harness used by a physician, constable, or minister in the practice of his profession, with food for such animals for one month; fishing boat and net of fisherman not exceeding five hundred dollars; poultry not worth more than seventy-five dollars; seamen's and sea-going fishermen's wages not exceeding three hundred dollars; the earnings of the judgment debtor for personal services rendered within thirty days next preceding the levy, when it appears by affidavit that such earnings are necessary for family support, but only half of such earnings are exempt when the debt is for necessaries; shares in homestead associations not exceeding one thousand dollars, when the debtor has no homestead selected; nautical instruments and wearing apparel of any mariner; life insurance policies, when the premium does not exceed five hundred dollars; all firearms required by law to be kept by any person, one rifle and one shotgun selected by the debtor; all material not over one thousand dollars purchased in good faith for use in or about to be applied in good faith to the construction, alteration, or repair of any building, mining claim, or other improvement, except upon a judgment recovered for its price, or foreclosure of a mortgage thereon, all machinery, etc., necessary in construction of artesian wells or surface wells to the value of one thousand dollars. Shares of stock in any building and loan association to the value of one thousand dollars; also a homestead, consisting of the land on which the debtor resides, to be selected by him, to the value of five thousand dollars, if the head of a family, or one thousand dollars of any other person.

COLORADO.— ACTIONS. There is only one form of action in civil cases, and actions are begun by filing with the clerk of the court a written complaint. Non-residents must give security for costs or by the service of a summons.

ATTACHMENT. Writ of attachment may issue on filing with the clerk of the court a bond with sureties in double the amount claimed, and an affidavit, signed by the plaintiff or on his behalf, stating the nature and amount of the claim, as near as may be, and that defendant is a non-resident or a foreign corporation or a corporation whose chief office or place of business is out of the State, or that he conceals himself or stands in defiance of an officer so that process cannot be served on him, or that for more than four months defendant has been absent from the State, or his whereabouts unknown, the indebtedness having been due during the whole of said period, or that he is about to remove his property from the State with intent to defraud or delay creditors; or that he has fraudulently assigned, concealed, removed, or disposed of his property to hinder or delay creditors, or is about to do so; or that he is about to depart from the State with the intention of having his effects removed from the State; or that he has failed or refused to pay the price of any article delivered to him which should have been paid for on delivery, or to pay for any services rendered by plaintiff at his request, which were to be paid for when said services were rendered; or that the debt was fraudulently contracted; or if defendant procured property of plaintiff by false representations or fraudulent conduct. Attachment may issue on debts not due if attachment levies on defendant's property are sufficient to render him insolvent. Writs of attachment may issue on Sunday or on Legal Holidays in urgent cases.

ARREST. No person can be arrested on mesne process, and only on execution, when it is on an action of tort in which the finding shall be for the plaintiff, and shall state that the defendant was guilty of malice, fraud, or willful deceit in committing the tort, and in this case he may be imprisoned for one year, or until the judgment is paid.

GARNISHMENT. If the sheriff cannot find any property of the defendant, or sufficient to satisfy the attachment, he may summon any persons named in the writ, who are indebted to, or have goods, effects, or credits of the defendant in their hands; and in any case on the return of an execution unsatisfied, any person having property of the defendant or indebted to him may be summoned into court to answer concerning the same.

JUDGMENT becomes a lien on the real estate of the defendant in any county by filing in such county an abstract of the judgment, and continues as such for six years, but execution must issue within one year. From the time that the execution is delivered to the officer the judgment becomes a lien on all the goods and chattels of the debtor.

STAY LAW. There is no stay of execution in Colorado except on appeal or in case of a writ of error by a supersedeas.

EXEMPTIONS. The following property of a person being the head of a family is exempt, and if the head of the family dies the family is entitled to the same exemption: The pictures, school-books, and library of the debtor; a seat or pew in church; one burial lot; necessary wearing apparel of the family; all beds and bedding, stoves and cooking utensils used by the debtor or his family, and other household furniture not exceeding one hundred dollars in value; provisions for the debtor and his family for six months, and fuel for six months; one bicycle, one sewing machine, the tools, implements, or stock-in-trade of a mechanic, miner, or other person, used and kept for the purpose of trade, not exceeding in value two hundred dollars; the library and implements of professional men, not exceeding three hundred dollars; working animals to the value of two hundred dollars; one cow and calf, ten sheep, and the necessary food for the same for six months, provided or growing, or both, also one farm wagon, one plow, harrow, and other farm implements, including harness and tackle for the team not exceeding fifty dollars, the wearing apparel of any person and the working animals of any person to the value of two hundred dollars are exempt from execution and attachment; the earnings of husband or wife, if the family is dependent in whole or in part on them for support, are exempt to the amount of sixty per cent of the amount due at the time of levy, when such family resides in the State. Every householder, the head of a family, is entitled to a homestead to the value of two thousand dollars while such homestead is occupied by the owner or his or her family, but to secure this he must cause the word "homestead" to be entered on the margin of the recorded title signed by himself and attested by the recorder, together with the date of record.

CONNECTICUT.— ACTIONS. There is but one form of civil action, which is commenced by writ of summons or attachment, accompanied by the complaint, which contains a statement of the facts constituting the cause of action and a demand for the relief sought.

ATTACHMENT. The defendant's estate, real or personal, may be attached in all complaints containing a money demand at the commencement of the action or at the discretion of the court during the pendency of the same.

ARREST. Defendant cannot be arrested in any action founded on contract merely, except for breach of promise to marry, misconduct or neglect in any office or professional employment, or in actions against a public officer, trustee, or person acting in a fiduciary capacity to recover moneys received by him. Defendant may be arrested on mesne process or execution when the declaration sets forth that he contracted the debt by fraud, or that he conceals, removes, or conveys away his property to prevent its being taken by legal process, or refuses to pay an admitted debt or judgment, having sufficient property to discharge the same concealed or withheld, or refuses to disclose rights of action with intent to prevent their being taken by foreign attachment.

GARNISHMENT. Goods concealed in the hands of agents so that they cannot be attached, or debts due from any person may be reached by process of foreign attachment.

JUDGMENT is not a lien on lands unless attached, or unless a certificate describing the court, date of judgment, names of parties, amount unsatisfied, and the premises on which the lien is claimed is recorded in the town where the lands lie.

STAY LAW. Stay of execution can be had only on appeal on a judgment against an executor or administrator in the settlement of an insolvent estate, in case of foreign attachment where it shall appear on *scire facias* that the debt due the principal is not yet payable, and on a judgment for a mortgagee in ejectment pending foreclosure of a mortgage.

EXEMPTIONS. The necessary apparel and bedding, household furniture necessary for supporting life (which clause is construed liberally), the arms, military equipments, uniforms, or musical instruments, owned by members of the militia, pension money received from the United States, implements of the debtor's trade, library not exceeding in value five hundred dollars, one cow not exceeding one hundred and fifty dollars in value, sheep not exceeding ten, or one hundred and fifty dollars in value, two swine, and two hundred pounds of pork, and poultry not exceeding twenty-five dollars in value. Of the property of any one having a wife or family, twenty-five bushels of charcoal, two tons of other coal, two hundred pounds of wheat flour, and two cords of wood, two tons of hay, two hundred pounds of beef and fish each, five bushels each of potatoes and turnips, ten bushels each of Indian corn and rye, or the meal and flour therefrom, twenty pounds each of wool and flax, or the yarn and cloth therefrom; the horse or bicycle of a practicing physician not exceeding two hundred dollars in value, and his saddle, bridle, harness, and buggy; one boat owned by one person and used by him in the business of planting or taking oysters or clams, or taking shad, together with the tackle, sails, rigging and implements used in said business, not exceeding in value two hundred dollars, one sewing machine, being the property of one person, one pew, and lot in a burying ground. Wages of any person including services of minor child not exceeding twenty-five dollars, except on a claim against him for personal board, and all benefits from charitable associations are exempt. Homestead to the value of one thousand dollars in any dwelling owned and occupied by the claimant is exempt, provided a declaration to that effect has been executed and recorded in the same manner as a deed of land, or inserted in the conveyance to him.

DELAWARE.—Actions may be commenced by a writ of capias or summons, or in the case of a non-resident defendant by attachment of property.

Arrest. The defendant may be arrested on mesne process, but, if he be a citizen of the State, only on plaintiff's filing an affidavit of fraud, except in actions for libel, slander, or injury to person or property accompanied with violence. A non-resident plaintiff cannot arrest on mesne process a non-resident defendant for debt contracted without the limits of the State.

The defendant can be arrested on execution only on affidavit of fraud, and when it appears by affidavit or the return on *scire facias* that he has no property in the county sufficient to pay the debt and costs.

Attachment. Writ of domestic attachment may issue after return by the officer showing that the defendant cannot be found, and proof of the cause of action, or on affidavit filed with the prothonotary that the defendant is justly indebted to the plaintiff in a sum exceeding fifty dollars, and has absconded from his usual place of abode, or gone out of the State with intent to defraud his creditors or to elude process, as it is believed. The proceeds of sale of property so attached are divided equally among defendant's creditors, except that the attaching creditors are entitled to a double share to the extent of their debt.

A writ of foreign attachment for debt but not for damages may issue against a person not an inhabitant of the State or foreign corporation after a return as above, or an affidavit that the defendant resides out of the State, and is justly indebted to the plaintiff in a sum exceeding fifty dollars.

Garnishment. The property, rights, or credits of a defendant against whom judgment has been obtained, in the hands of a third party may be attached.

Judgment of Superior Court is a lien on real estate of the defendant from the date of entering same. After twenty years it is presumed to be paid.

Stay Law. Execution on judgments for want of affidavit of defense may be stayed six months on giving good security. In suits before a magistrate six months' stay on defendant's pleading his freehold, nine months on giving security.

Judgments obtained at second term after suit are allowed a stay of three months.

Exemptions. The family Bible, school books and family library, family pictures, a seat or pew in church, burial lot, all the wearing apparel of debtor and family, and in addition the tools, implements, and fixtures necessary for carrying on his trade or business, not exceeding seventy-five dollars in New Castle and Sussex Counties, and fifty dollars in Kent County. There is exempted to the head of the family, in addition to the above, other personal property (goods of merchantable character bought to be sold in transaction of debtor's business) not exceeding two hundred dollars in New Castle County, and not exceeding one hundred and fifty dollars consisting of household goods only in Kent County. There is no such additional exemption in Sussex County, and there is no such additional exemption when such exemption would prevent the collection of a debt due or growing due for labor or services (other than professional services) rendered by any clerk, mechanic or other employee of the debtor. Sewing machines owned and used by seamstresses or private families are also exempt.

In New Castle County 90% of all wages are exempt from attachment, except for board or lodging, or both, not exceeding $50.00. Widows in all cases shall have the same exemptions out of the husband's goods that he would have if living. Funeral expenses, reasonable bills for medicine and medical attendance, nursing and necessaries of last sickness are paid out of the personal property of a deceased person, before there is any application to the execution. The above exemptions extend to distress for rent. Pianos, piano playing attachments and organs leased or hired are exempt from execution or from distress for rent due from the person leasing or hiring, after notice of the lease to the landlord.

There is no homestead exemption.

DISTRICT OF COLUMBIA.—Actions in the Supreme Court of the District are commenced by filing in the clerk's office a libel or information bill, petition, or declaration, and service of writ and payment of deposit to secure costs of suit.

Plaintiff may include in his declaration all causes of action against the defendant, stating them in separate counts.

ARREST.— No person can be arrested in a civil suit, or imprisoned for debt other than fines.

ATTACHMENT.— Writs of attachment and garnishment may issue either at the commencement or during the pendency of the action, on plaintiff's filing an affidavit, supported by testimony of one or more witnesses, setting forth the grounds of action and that plaintiff has a good right to recover, and also stating either that defendant is a foreign corporation or a non-resident or has been absent therefrom at least six months and has estate or debts owing him in said District or evades service of process by concealing himself or withdrawing temporarily from the District, or has removed or is about to remove some of his property from the District to defeat just demands, or has assigned, disposed of, or secreted property, or is about to do so with intent to hinder, delay, or defraud creditors or fraudulently contracted the debt or incurred the obligation sued on attachment may be dissolved by defendant giving bond.

JUDGMENT is a lien on real estate from the date of rendition and as long as the judgment remains in force.

STAY LAW. Execution is stayed only by appeal and filing a bond.

EXEMPTIONS. Wearing apparel of all persons; and to heads of families who are householders, beds, bedding, household furniture, stoves, cooking utensils, etc., not exceeding three hundred dollars in value; provisions for three months' support, whether provided or growing; fuel for three months; mechanics' tools, and implements of debtor's trade or business, amounting to two hundred dollars in value, with two hundred dollars' worth of stock for carrying on business of debtor or his family: library and implements of professional man or artist, to value of three hundred dollars; one horse, one mule, or yoke of oxen, one cart, wagon or dray, and harness for team; farming utensils, with food for such team for three months; and if debtor be a farmer, any other farming tools to the value of one hundred dollars; all family pictures, and all family library not exceeding in value four hundred dollars; one cow, one swine, six sheep. The earnings, not exceeding one hundred dollars per month, of actual residents of the District who are married persons, or who have to provide for the support of a family in the District, for two months preceding the issuing of process are also exempt.

There is no homestead exemption.

FLORIDA.— ACTIONS at law are commenced by filing a *præcipe* with the clerk.

ARREST. There is no statute law authorizing the arrest of a defendant in a civil action.

ATTACHMENT may issue on the affidavit in writing before a justice of the peace or clerk of the circuit court, that the amount demanded is actually due, and that the plaintiff has reason to believe that the defendant will part with his property fraudulently before judgment can be obtained, or is actually moving his property out of the State, or is about to do so, or resides out of the State, or is removing or about to remove from the State, or absconds or conceals himself or his property or is fraudulently disposing of the same, or is removing or is about to remove beyond the judicial circuit in which he resides, and furnishing security for costs and damages. Writ of attachment may issue before the debt or demand is due, provided it will become due within nine months, on plaintiff's filing an affidavit that the amount claimed is actually an existing debt or demand, the amount and date when it will become due, and also that the debtor is actually removing his property beyond the limits of the State, or in fraudulently disposing of or secreting the same for the purpose of avoiding the payment of his just debts.

Garnishment. A writ of garnishment may issue on all judgments or decrees rendered whether execution issued on such judgment be returned or not, provided an affidavit on behalf of the plaintiff be filed stating that he does not believe that the defendant has visible property in his possession on which levy can be made sufficient to satisfy the judgment.

A writ of garnishment may also be sued out before judgment on filing a like affidavit.

Judgment is a lien on real estate and becomes so in any county by recording it in such county before the alienation of the property. It is binding in the county in which suit was brought from the date when it was rendered. Mortgages, notices of liens, or judgments when extinguished, must be canceled by holder on the records under penalty for failure. Judgments, the records of which have been destroyed by fire, are not good against creditors and bona fide purchasers without notice unless legal proceedings to re-establish the same are begun within nine months.

Judgments of a lower court, sustained in the Supreme or Circuit Court on appeal or supersedeas, runs against sureties on bond.

Stay Law. There is no stay of execution in Florida.

Exemptions. There is exempt to the head of each family a homestead of one hundred and sixty acres, or one-half an acre in an incorporated city or town, with the improvements on such real estate, together with one thousand dollars' worth of personal property, to be selected by the debtor, but no property is exempt from sale for taxes, for obligations contracted for the purchase of the same or in making improvements thereon, or for labor performed thereon.

Money due for personal labor or services of the head of a family is exempt from attachment or garnishment.

GEORGIA.— Actions. All distinctions between real, personal, and mixed actions are abolished.

Arrest. Imprisonment for debt is abolished, but in actions for the recovery of personal property, on plaintiff's making affidavit that he has reason to believe that said property has been or will be eloigned or moved away, or will not be forthcoming to answer the judgment, defendant may be arrested and committed to jail, unless he give bond with good security, or on application to the judge states on oath that he is neither able to give the security required by law nor produce the property, and can furnish satisfactory reasons for its non-production, when he may be discharged on his own recognizance. He shall also traverse the plaintiff's statements in his affidavit.

Attachments may issue whether the debt is due or not. 1. When the debtor resides out of the State. 2. When he is actually removing or is about to remove without the limits of the county. 3. When he absconds. 4. When he conceals himself. 5. When he resists legal arrest. 6. When he is causing his property to be removed beyond the limits of the State, when he is disposing of or threatens to dispose of or conceals his property liable to the payment of his debts, or makes a fraudulent lien thereon, to avoid payment of his debts. Plaintiff must make affidavit before a judge of the superior court, or county court, a justice of the peace, or a notary public, setting forth one of the above causes, and the amount of the debt claimed, and must give a bond to the defendant to prosecute his suit, and the defendant may dissolve the attachment by giving bond.

Garnishment may issue before or after judgment against debtors of the defendant, on plaintiff's making affidavit of the amount due, and that he has reason to apprehend the loss of the same or of some part thereof unless garnishment issue, and giving bond with security for damages and costs. Journeymen, mechanics, and day laborers are exempt from garnishment on their daily, weekly, or monthly wages.

Judgment is a lien on all property, real or personal, except promissory notes and choses in action. All judgments draw lawful interest which is 7%.

The judgment lien is discharged in four years on real property, and two years on personal property sold to a *bona fide* purchaser for a valuable consideration.

Stay Law. If the debtor gives a bond with good security, execution may be stayed sixty days.

Exemptions. The Constitution of 1877 provides that there shall be exempt from levy and sale by virtue of any process whatever, of the property of every head of a family, or guardian or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of a dependent female of any age who is not the head of a family, real or personal property, or both, to the value of sixteen hundred dollars, except that such property is liable for taxes, purchase money, labor done thereon, or materials furnished therefor, and for the expense of removing encumbrances thereon. Debtor may waive in writing the benefit of these exemptions, except as to wearing apparel and not exceeding three hundred dollars' worth of household and kitchen furniture and provisions to be selected by himself and wife.

If the debtor, being the head of a family, does not avail himself of the foregoing exemption, he may claim those allowed by prior laws, viz: fifty acres of land and five acres additional for every child under sixteen years, including the dwelling-house, if such house and improvements do not exceed in value two hundred dollars, such homestead not to be in any city, town, or village; or in lieu thereof, real estate in a city, town, or village, not exceeding five hundred dollars in value; also one farm horse or mule, one cow and calf, ten head of hogs, and fifty dollars' worth of provisions, and five dollars' worth additional for every child, beds, bedding, and common bedsteads sufficient for the family, one loom, one spinning-wheel, and two pairs of cards and one hundred pounds of lint cotton, common tools of trade of the debtor and his wife, ordinary cooking utensils and table crockery, wearing apparel of the debtor and his family, library of a professional man in actual practice not exceeding in value three hundred dollars, to be selected by the debtor. Also fifty bushels of corn, one thousand pounds of fodder, one one-horse wagon, one table, one set of chairs sufficient for the use of the family, and household and kitchen furniture, all not to exceed one hundred and fifty dollars in value. A family sewing-machine is exempt, whether the owner is the head of a family or not.

The wages of mechanics, journeymen, and day laborers are also exempt.

IDAHO.—Actions. There is but one form of action which is commenced by filing a complaint and causing a summons to be issued thereon.

Arrest. Defendant may be arrested in the following cases: in an action on a contract when defendant is about to depart from the Territory with intent to defraud his creditors; in an action for willful injury to person, character, or property; in an action for a fine or penalty, or on a promise to marry, or for money or property embezzled or fraudulently misapplied, or for misconduct or neglect in office or in professional employment, or for willful violation of duty. In an action to recover possession of personal property unjustly detained, where the property has been concealed, removed, or disposed of to prevent its being found; when defendant was guilty of fraud in contracting the debt or obligation sued on, or in concealing or disposing of the property for the taking, detention, or conversion of which the action was brought, or when defendant has removed or disposed of his property or is about to do so to defraud his creditors.

Plaintiff must file affidavit showing one or more of the above causes and a bond of indemnity to the defendant.

Attachment may issue in actions on contracts for the express payment of money, where there is no security or in an action of contract against a non-resident; an affidavit must be filed setting forth the amount due, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud creditors, and giving security.

GARNISHMENT. On notice in writing from the plaintiff that any person has property or credits belonging to the defendant, the sheriff may attach the same by serving on such person a copy of the writ of attachment or execution, together with notice that such property or credits are attached.

JUDGMENT is a lien for two years from the time of docketing the same, on all real estate owned by the defendant in the county, and in any other county for two years after a transcript of the original docket has been filed with the recorder thereof.

STAY LAW. There is no stay of execution except in case of appeal with bond given.

EXEMPTIONS. Except on judgments for the purchase price: 1. Chairs, tables, desks, and books to the value of two hundred dollars. 2. Necessary household furniture to the value of three hundred dollars, pictures and drawings, family portraits and their frames, provisions for six months, two cows with their sucking calves, and two hogs with their sucking pigs. 3. Farming utensils and implements not exceeding three hundred dollars in value, four oxen or four horses or mules and their harness, one cart or wagon, and food for such oxen, horses, or mules for six months; water right not exceeding one hundred and sixty inches of water for irrigation purposes, and crops growing or grown on fifty acres of land leased, owned, or possessed by claimant. 4. Necessary tools or implements of a mechanic or artisan not exceeding five hundred dollars, notarial seal and records of a notary public, instruments and chests of a surgeon, physician, surveyor, or dentist, with their scientific and professional libraries, professional libraries and office furniture of attorneys, councilors, and judges, and libraries of ministers of the Gospel. 5. The cabin or dwelling of a miner not exceeding five hundred dollars, also his mining tools and apparatus, and a pack-horse of prospector, of value of two hundred and fifty dollars. 6. Team, wagon or cart and harness of teamster, or other laborer, and one horse with vehicle and harness used by a physician, surgeon, or minister in making his professional visits, with food for such animals for six months. 7. The earnings of the judgment debtor for personal services rendered within thirty days of the levy of execution, when such earnings are necessary for the support of the family and family resides in State. 8. Shares held by a member of a homestead association or building and loan association incorporated under the laws of the State, if the holder is not the owner of a homestead. 9. Insurance on the life of the debtor to the extent of an annual premium not exceeding two hundred and fifty dollars. 10. Uniforms and apparatus of fire company or department, or of arms, uniforms, etc., required by law to be kept. Public buildings, grounds, and personal property pertaining thereto. 11. A homestead not exceeding five thousand dollars to head of family, and one thousand dollars to other persons.

ILLINOIS.—ACTIONS are begun by a summons issued under the seal of the court, and are substantially in form as at common law.

ATTACHMENTS. The creditor may have an attachment against the property of the defendant when the debt exceeds *twenty* dollars. 1. Where the debtor is a non-resident. 2. Where the debtor conceals himself, or stands in defiance of the officer so that process cannot be served. 3 and 4. Where the debtor has departed, or is about to depart from the State with the intent to have his effects removed from the State. 5. Where the debtor is about to remove his property from the State, to the injury of creditors. 6, 7, and 8. Where the debtor has, within two years preceding the filing of the affidavit, fraudulently conveyed, concealed, or disposed of his property so as to hinder or delay his creditors, or is about to do so. 9. Where the debt sued for was fraudulently contracted, provided the statements have been reduced to writing by him or his agents. The creditor must file an affidavit with the clerk of the court, stating the nature and amount of the indebtedness, and any one of the preceding causes, and the place of residence of the defendant, if known; must give a bond to the defendant to prosecute his case and to pay costs if not successful. Officer also generally requires an indemnity bond.

ARREST. The defendant may be arrested on mesne process, in actions of contract and on judgments, on an affidavit setting forth the cause and amount due, and facts showing that the defendant fraudulently contracted the debt, or that he has concealed, assigned, or disposed of property with intent to defraud his creditors; or, in actions sounding in damages merely, the facts of the case, and that the plaintiff believes that the benefit of the judgment will be lost unless the defendant is required to give bail. Plaintiff must also give security for damages and costs.

After return of execution unsatisfied, an order of arrest may be procured on plaintiff's affidavit that demand has been made for property to satisfy execution, and that he believes that he has property specified, not exempt, which he unjustly refuses to surrender, or that since debt was contracted or cause of action accrued, debtor has fraudulently conveyed, concealed, or otherwise disposed of some part of his estate to secure same to his own use, or with intent to defraud creditors, and setting forth facts on which belief is founded. The judgment is satisfied at the rate of one dollar and fifty cents per day during the debtor's inprisonment.

GARNISHMENT. On a writ of attachment, when the officer is unable to find property of the defendant, he may summon any persons designated by the plaintiff, who have property of the defendant, or who owe debts to the defendant, the same as if they were inserted in the writ. He may also summon such persons after judgment and return by the officer of "no property found," on affidavit by the plaintiff. The wages of defendant who is the head of a family, and residing with the same, to the amount of fifteen dollars per week are exempt.

JUDGMENT is a lien against real estate in the county for seven years, and bears interest at six per cent. There is no priority of judgment rendered at the same term of the court.

STAY LAW. There is no stay of execution in Illinois.

EXEMPTIONS. A householder having a family, is entitled to a homestead in a farm or lot of land, and the buildings occupied as a residence, to the value of one thousand dollars; of personal property, the necessary wearing apparel, Bibles, school-books, family pictures, one hundred dollars' worth of other property to be selected by the debtor, and, where the debtor is the head of a family, three hundred dollars' worth of such property. No personal property exempt from judgment for wages of laborer or servant.

INDIANA. — ACTIONS. All distinctions of actions are abolished, and there is but one form for law and equity; must be prosecuted in the name of the real party to the suit, and are begun by filing with the clerk a complaint and causing a summons to issue thereon.

ARREST. The defendant may be arrested and held to bail at any time before judgment, on an affidavit on behalf of the plaintiff, specifying his right to recover an existing debt or damages, and stating that affiant believes that the defendant is about to leave the State, taking his property with him, with intent to defraud his creditors. Plaintiff must give bond to pay to the defendant all damages if the order be wrongfully obtained.

ATTACHMENT. Plaintiff may have a writ of attachment at any time where the action is for the recovery of money, where the defendant is a foreign corporation or a non-resident of the State, or secretes himself, or is secretly leaving the State or has left it, with intent to defraud his creditors, or is removing, or about to remove, his property from the State, not leaving enough to satisfy the plaintiff's claims, or has sold, conveyed, or otherwise disposed of his property with intent to defraud or delay his creditors, or is about to do so. He must file with the clerk an affidavit showing the nature and amount of his claim, that it is just, and that he believes he ought to recover the same, and one of the grounds of attachment mentioned above, and give security to the defendant for damages and costs.

GARNISHMENT. If an affidavit is filed at any time stating that the affiant has good reason to believe that any one has property of the defendant which cannot be attached, or is indebted to him, the clerk may issue a summons to such person or persons to appear as garnishee. The garnishee may be arrested on affidavit filed, that it is believed that he is about to abscond, with intent to defraud creditors, and that he has property of the defendant. Wages of an employee to the value of twenty-five dollars exempt so long as he remains in same employ.

JUDGMENT for the recovery of money or costs is a lien on the real estate and chattels of the defendant in the county where judgment was rendered, for ten years, and becomes such a lien in other counties at the filing therein of a certified copy. Judgments bear interest from the date of signing, at the same rate, not exceeding six per cent., as the contracts on which they were rendered.

STAY LAW. On giving bond with good surety, execution may be stayed as follows: On sums, excluding costs, not exceeding six dollars, thirty days; on all sums between six and twelve dollars, sixty days; between twelve and twenty dollars, ninety days; between twenty and forty dollars, one hundred and twenty days; between forty and one hundred dollars, one hundred and fifty days; over one hundred dollars, one hundred and eighty days.

EXEMPTIONS. An amount of property, real or personal, not exceeding six hundred dollars, is exempt for any debt growing out of or founded on contract. The debtor may select the property that he wishes to have exempt. There is no homestead exemption.

IOWA.—ACTIONS. All distinctions of forms are abolished. They must be prosecuted by and in the name of the real party in interest, except in the case of executors, administrators, guardians, and trustees, and are begun by serving the defendant with a notice that a suit will be brought on or before a certain day, and filing a petition containing a statement of the facts constituting the cause of action.

ARREST. No arrest on mesne process or final process except in case of fraud.

ATTACHMENT. There may be an attachment at any time on a sworn petition, stating, 1. That defendant is a foreign corporation. 2. Non-resident. 3. Is about to remove his property from the State without leaving sufficient for payment of debts. 4. Has disposed of his property with intent to defraud his creditors. 5. Is about to do so. 6. Has absconded, so that ordinary process cannot be served on him. 7. Is about to remove permanently from the county, and has property therein not exempt and that he refuses to pay to the creditor. 8. Is about to remove permanently from the State and refuses to pay or secure the debt. 9. Is about to remove his property out of the county with intent to defraud creditors. 10. Is about to convert his property into money with intent to place it out of reach. 11. Has property concealed. 12. That the debt is for property obtained under false pretences.

Property may be attached before debt becomes due when nothing but time is wanting to fix an absolute indebtedness, if petition, in addition to that fact, states that defendant has disposed of his property with intent to defraud creditors, or is about to do so, or that he is about to remove from the State and refuses to make any arrangements for securing the payment of the debt, which contemplated removal was not known to plaintiff at the time when the debt was contracted or that the debt was incurred for property obtained under false pretenses.

Plaintiff must file a bond with sureties before the issuing of the writ.

GARNISHMENT. On a writ of attachment the sheriff shall summon such persons as garnishees as plaintiff may direct, giving them written notice not to pay any debt due the defendant or thereafter to become due, and to retain any property belonging to defendant to be dealt with according to law.

JUDGMENT is a lien on real estate for ten years, in the county where it was rendered, from the date of such rendition, and in other counties from the date of filing an attested copy therein; bears interest at six per cent. unless a different rate was expressed in the contract, in which case it shall bear such rate of interest, not exceeding eight per cent.

STAY LAW. On all judgments for the recovery of money, except those rendered on appeal or writ of error, or for money received in a fiduciary capacity, or for breach of official duty or against the surety in a stay of execution or judgment obtained by a laboring man or a mechanic for his wages, execution may be stayed by giving bonds with good security, as follows: on sums not exceeding one hundred dollars, three months; on sums exceeding one hundred dollars, six months. All judgments on which execution is stayed bear interest at the same rate as the judgment.

EXEMPTIONS. To a debtor, resident of the State and head of a family, the wearing apparel for himself and his family and trunks to contain the same, one musket or rifle and shot gun, private libraries and family Bibles, portraits, pictures, musical instruments, paintings, not kept for sale, seat or pew in church, and lot in burying-ground, not exceeding one acre, two cows and two calves, one horse, fifty sheep and the wool therefrom and materials manufactured from such wool, six stand of bees, five hogs and all the pigs under six months, poultry to the value of fifty dollars, the necessary food for all animals exempted, for six months, all the flax raised on ground not exceeding one acre and the manufactures therefrom, one bedstead and bedding for every two persons, cloth manufactured by the debtor not exceeding one hundred yards, household and kitchen furniture not exceeding two hundred dollars in value, spinning-wheel and looms, one sewing-machine and other instruments of domestic labor kept for actual use, necessary provisions and fuel for six months, tools, instruments or books of the debtor, if a farmer, mechanic, surveyor, or professional man; horse or team consisting of not more than two horses or mules or two yoke of oxen, and wagon or other vehicle with the harness and rigging, by the use of which the debtor earns his living, and if the debtor is a printer, types, furniture, and materials necessary for his business not exceeding twelve hundred dollars in value. The earnings of the debtor if a resident and head of a family within ninety days of the levy are also exempt. If debtor is seamstress, one sewing machine. If the debtor has started to leave the State he will have exempted only the wearing apparel of himself and family and other property not exceeding seventy-five dollars in value. No exemption of goods from judgment for purchase price thereof.

The homestead of the debtor is also exempt (except for debts prior to its purchase, unless purchased with pension money) embracing the house used by him as a home, and if in a town plat, not exceeding one-half an acre in extent, or not exceeding forty acres if not in any town plat without limitation as to value. To an unmarried person not the head of a family or to a non-resident there is exempt ordinary wearing apparel and trunk necessary to contain the same.

KANSAS.—Actions are brought in the name of the real party interested, and begun by filing with the clerk a petition, and causing a summons to issue thereon upon the filing of a bond.

Arrest. Debtor may be arrested before or after judgment — on giving security and filing with the clerk an affidavit, stating the nature and the amount of the claim, and that it is just, and one of the following reasons: 1. That defendant has or is about to remove his property out of the jurisdiction of the court with intent to defraud creditors. 2. That he has begun to convert his property into money for the purpose of placing it beyond the reach of his creditors. 3. That he has property fraudulently concealed. 4. That he has assigned or disposed of his property, or begun to do so, with intent to defraud his creditors. 5. That he fraudulently contracted the debt. The affidavit must also state the facts claimed to justify the belief in the above causes for arrest.

Attachment. Writ of attachment may issue for one of the following causes: 1. That the defendant is a foreign corporation or non-resident (but in this case only on a demand arising upon a contract, judgment, or decree, unless the cause of action arose wholly within the limits of the State). 2. That he has absconded with intent to defraud creditors. 3. That he has left the county with intent to avoid service. 4. So conceals himself that summons cannot be served on him. 5. Is about to remove his property from the jurisdiction of the court with intent to defraud. 6. Is about to convert his property into money in order to place it beyond the reach of creditors. 7. Has property concealed. 8. Has assigned or disposed of, or is about to dispose of, property to defraud or delay his creditors. 9. That he fraudulently contracted the debt. 10. Where the damages sought to be recovered are for injuries resulting from the commission of a felony or misdemeanor or the seduction of a female. 11. Where the debtor failed to pay the price of any article delivered, when by the contract he was bound to pay for on delivery. An affidavit must be filed stating the nature and amount of the claim, and that it is a just one, and also one of the above causes, and security must be given unless the defendant is a foreign corporation or a non-resident. Where either the fifth, sixth, seventh, or eighth of the above grounds exists the action may be brought and attachment made before the maturity of the debt by special order of court. Attachment may be dissolved by the defendant by giving bonds.

Garnishment issues on filing with the clerk an affidavit setting forth the amount of claim that affiant believes that the person or persons named have property of the defendant, or are indebted to him, that the same is not exempt and that defendant has not property liable to execution sufficient to satisfy debt and filing bond to defendant.

Judgment is a lien on real estate in the county where it was rendered from the first day of term in which it was so rendered, and in other counties from the filing therein an attested copy of the judgment, and such lien continues for five years. Judgment by confession or those rendered at the term the action is commenced are liens only from the date of entry. Unless execution is taken out within one year the lien ceases as against any other judgment creditor.

Judgments bear interest at the rate of six per cent., or when rendered on contract the rate mentioned there is not exceeding ten per cent.

Stay Law. There is no stay of execution in the District Courts except on appeal. In justices' courts stay is granted on filing a bond with good security, as follows: on amounts not exceeding twenty dollars, thirty days; between twenty and fifty dollars, sixty days; between fifty and one hundred dollars, ninety days; over one hundred dollars, one hundred and twenty days.

EXEMPTIONS. A homestead of one hundred and sixty acres of farming land with the improvements, or one acre in an incorporated city or town, occupied as the residence of the debtor and his family. Personal property of a debtor who is the head of a family, consisting of, 1, family Bible, schoolbooks, and family library; 2, family pictures, and musical instruments used; 3, seat or pew in church and lot in burying-ground; 4, wearing apparel, beds, bedding, and bedsteads used in the family, stoves and cooking utensils necessary for the use of the debtor and his family, one sewing-machine, all spinning-wheels and looms, and all other implements of industry and other household furniture not exceeding in value five hundred dollars; 5, two cows, ten hogs, one yoke of oxen, one horse or mule, or in lieu of one yoke of oxen, and one horse or mule, a span of horses or mules, twenty sheep and the wool of the same; 6, the necessary food for the support of the stock mentioned for one year, one wagon, cart, or dray, two plows, one drag, and other farm utensils, including harness for teams, not exceeding three hundred dollars in value; 7, grain, meat and other provisions necessary for one year, and fuel for one year; 8, necessary tools of mechanic, miner, or other person used for trade or business, and in addition thereto stock in trade not exceeding four hundred dollars in value; 9, library, implements, and office furniture of a professional man. If the debtor is a resident, but not the head of a family, his wearing apparel, seat or pew in the church, and lot in burying-ground, and as above in eight and nine. The earnings of the debtor or personal service for three months are exempt when necessary for maintenance of family.

KENTUCKY.—ACTIONS. There is only one form for civil actions, which are begun by filing with the clerk of the court a petition, and causing a summons to issue thereon.

ARREST. The defendant may be arrested and held to bail at any time before judgment, on filing with the clerk an affidavit showing, 1, the nature of the claim; 2, that it is just; 3, the amount; and 4, that the affiant believes either that the defendant is about to leave the State, and with intent to defraud his creditors has concealed or removed from the State his property, so that there will not be enough left to satisfy the plaintiff's claim, or that the defendant has money or securities or evidences of debt and is about to leave the State, without leaving enough to satisfy the plaintiff's claim. Plaintiff must also give bond with sureties.

ATTACHMENT. Writ of attachment issues against the property of a defendant or garnishee, in an action for the recovery of money, in the following cases: 1. Where the defendant, or one of them, is a foreign corporation, or non-resident of the State (but in this case only for a debt or demand arising on contract or a judgment or award). 2. Or has been absent from the State four months. 3. Has departed from the State with intent to defraud his creditors. 4. Has left his county to avoid service. 5. Conceals himself so that summons cannot be served on him. 6. Has removed or is about to remove his property from the State, not leaving enough to satisfy the plaintiff's claim or claims of creditors. 7. Has sold or disposed of, or suffered to be disposed of, his property with intent to defraud or delay his creditors, or 8, is about to sell or dispose of his property, with such intent. Attachment may issue, also, in action for recovery of money due on contract, judgment, or award if defendant have not property in the State to satisfy plaintiff's demand and collection will be endangered by delay. Also in action to recover personal property ordered to be delivered to plaintiff which has been disposed of or concealed so that order for delivery cannot be executed.

Plaintiff must give security and file an affidavit showing the nature of the claim, that it is just, the amount of the same, and one of the foregoing causes.

GARNISHMENT. On return of the execution with return of "no property found," the plaintiff may bring a suit against the defendant for discovery, and bring in any parties indebted to the defendant, or who have property of the defendant, as parties to the suit.

JUDGMENT is not a lien on defendant's property.

STAY LAW. At any time before sale on execution, defendant may replevy the judgment for three months by giving bond with surety.

EXEMPTIONS of a householder with a family resident in the State, on all debts contracted after June 1, 1886, two work beasts, or one and yoke of oxen, two plows and gear, one wagon, cart, or dray, and set of gear, two axes, three hoes, one spade, one shovel; two cows and calves; beds, bedding, and furniniture sufficient for family use; one loom and spinning-wheel, and pair of cards; all the spun yarn and cloth manufactured by the family necessary for family use; carpeting for all family rooms in use; one cooking stove and all cooking utensils; all table ware and cutlery used by the family; one table; all books not to exceed fifty dollars in value; two saddles and their appendages; two bridles; six chairs, or so many as shall not exceed ten dollars in value; one cradle; all poultry on hand; ten head of sheep, not to exceed twenty-five dollars in value; all wearing apparel; sufficient provisions for the family for one year, or if not on hand, other personal property, wages, money, or growing crop, not to exceed forty dollars in value for each member of the family; provender for live stock to the value of seventy dollars; if not on hand, other personal property not to exceed seventy dollars in value; all washing apparatus not to exceed fifty dollars in value; arms, ammunition, and equipments of a militia-man; one sewing-machine; and all family portraits and pictures. Also dwelling-house and land, not exceeding one thousand dollars in value.

Debts contracted prior to 1886 are subjected to the provisions of the exemption laws then in force, which differ somewhat from the above.

In addition to the above, there are exempt, under prior laws still in force, tools, not exceeding one hundred dollars in value, of any mechanic who is a *bona fide* housekeeper with a family; libraries of ministers, professional libraries and instruments of physicians, surgeons, and attorneys, not exceeding five hundred dollars in value.

LOUISIANA.—ACTIONS are begun by petition, stating all the facts necessary to the cause and identification of the parties on which a citation issues, addressed to the defendant.

ARREST. The defendant cannot be arrested to secure payment of a debt, but only to secure his person to answer to the suit. A non-resident cannot be arrested unless it appear on oath that he has absconded from his residence in his own State.

Plaintiff must file affidavit of amount due, that he believes defendant is about to remove from the State without leaving sufficient property to satisfy his demand and that he asks this remedy, not to vex defendant but only to secure his demand. He must also give security to defendant.

ATTACHMENT. Writ of attachment issues when the defendant resides out of the State, or has left or is about to leave the State permanently; or when he conceals himself to avoid service of summons; or when he has assigned or disposed of, or is about to assign or dispose of, his property, with intent to defraud his creditors or give an unfair preference; or when he has converted, or is about to convert his property into money, with intent to conceal the same; or when he is about to remove his property from the State before the debt becomes due. The plaintiff must file a sworn petition, setting forth the facts which render the writ necessary, and the nature and amount of the claim, and give bond with sureties. Writs of sequestration and provisional seizure issue in certain cases.

GARNISHMENT. In cases of attachment, or in proceedings after judgment, where the creditor believes that any other parties have property of the defendant, or are indebted to him, he may cite them in as parties.

JUDGMENT acts as a mortgage on all real estate of the debtor, from the date of the record in the office of the Parish Recorder. It is prescribed, and ceases to be a lien in ten years.

STAY LAW. There is no stay of execution in Louisiana except on appeal.

EXEMPTIONS. A homestead consisting of land with the buildings occupied by the debtor as a residence and owned by him, when he has a family dependent on him, together with a certain amount of stock; but the homestead in no case to be worth more than two thousand dollars, and no homestead is allowed if the wife, in her own right, owns property to the amount of two thousand dollars. A written declaration of homestead must be executed by the person claiming the benefit of the same, and recorded in the book of mortgages for the parish where the homestead is situated. Also are exempt the clothes and linen of debtor or his wife, his beds, bedding, and bedsteads, or those of his family, his arms and military accoutrements, the tools, instruments, books, and sewing-machines necessary for the trade or calling by which the debtor makes a living, cooking-stoves and utensils, dining-table and chairs, dishes, knives and forks, etc., wash-tubs, smoothing-irons and ironing-furnaces, family portraits, belonging to the debtor, and musical instruments in use; income of dotal property, money due for the salary of an office, and laborer's wages.

MAINE.—ACTIONS are begun by original writ, framed to attach the goods and estate of the debtor, and for want thereof his body, or by summons with or without an order of attachment, in the county where either party lives, unless it be a real action, when it must be brought where the land lies.

ARREST. Defendant may be arrested on mesne process in an action of tort, and in an action of contract, when the debt is over ten dollars, exclusive of interest, and the debtor is about to depart permanently from the State, with his property exceeding the amount required for immediate support on affidavit by the creditor or his agent to the above effect. He may also be arrested on execution in actions for torts but not in actions founded on contract unless in special proceedings for disclosure he fails to appear for examination, or to obtain the benefit of disclosure proceedings by reason of fraud.

ATTACHMENT. All property not exempt may be attached without affidavit, bond, or order of court, and it continues under lien for thirty days after judgment.

Garnishment in this State is called Trustee Process. Personal actions, except detinue, replevin, malicious prosecution, slander, libel, and assault and battery, may be begun by such process, when the trustee has any property or effects of the defendant, or is indebted to him, but the wages of the defendant for the month preceding, not exceeding twenty dollars, are exempt, except for necessaries.

Judgment. There is no lien of judgment, its place being supplied by the lien of attachment.

Exemptions. The homestead of a householder to the value of five hundred dollars, provided a certificate has been filed in the registry of deeds, and one cemetery lot. Of personal property, the debtor's wearing apparel, necessary household furniture not exceeding in value one hundred dollars, one bed, bedstead and bedding for every two persons, family portraits, Bibles and school-books, a copy of the State Statutes, and library not exceeding one hundred and fifty dollars in value, a pew in a meeting-house, one cooking-stove, and iron stoves used for heating, charcoal, five tons of anthracite coal, fifty bushels of bituminous coal, twelve cords of wood, ten dollars' worth of lumber, wood, or bark, produce of farm until harvested, one barrel of flour, thirty bushels of corn and grain, potatoes for debtor and family, flax raised on half an acre of ground, and articles manufactured therefrom for the family, tools of trade, fifty dollars in material and stock, sewing-machine, one pair of working cattle, or pair of mules, or one or two horses, not exceeding in value three hundred dollars, and hay for the winter, one harness worth twenty dollars for each horse or mule, a horse-sled or ox-sled, two swine, one cow and heifer, or two cows if no oxen, horse or mule, ten sheep, and the lambs and wool from them and hay for the winter; fifty dollars' worth of domestic fowls; a plow, cart, harrow, and yoke, two chains, a mowing machine, and one boat of two tons, employed in fishing; and life and accident insurance policies, except excess of annual cash premiums for two years above one hundred and fifty dollars.

MARYLAND.—Actions are begun as at common law, and the common law forms of actions remain as simplified by the Code of Procedure.

Arrest for debt is abolished.

Attachment may issue where the defendant is a non-resident, or where he absconds, on affidavit that the debt is a *bona fide* one, and that defendant is a non-resident or has absconded, together with the evidences of the debt. It may also issue on an original process based on an account, note, bond, or other evidence of debt, on an affidavit that the defendant is really indebted, and is about to leave the State, or that he has, or is about to assign or dispose of his property with intent to defraud his creditors, or that he fraudulently contracted the debt for which the action is brought, or that the defendant has, or is about to, remove his property out of the State with intent to defraud his creditors. Attachment may issue where two summonses have been returned *"non est,"* on proof by the plaintiff of his claim by affidavit and the production, if any, of written evidence of the debt, also against non-resident or absconding debtors in case of actions for false imprisonment or illegal arrest, for the amount of damages claimed. The salary of a public officer, or employe of a municipal corporation, funds in hands of government due its agents, or property or funds in custody of the law or under control of court cannot be attached. Wages and salary not due at the time of attachment, cannot be attached, and one hundred dollars is exempt out of what is due.

GARNISHMENT may be issued against property of the defendant in the hands of any person by attachment. (*See* ATTACHMENT.)

JUDGMENT is a lien on real estate of the defendant acquired after judgment, as well as what was owned by him at the date of rendition, and becomes a lien in other counties by transferring it to such counties; bears interest at six per cent. Judgments remain a lien for twelve years.

STAY LAWS. On all judgments rendered by the circuit courts for the counties the second term after the defendant has been summoned, he is entitled to stay of execution until the first Thursday of the following term. But judgments rendered by the law courts of Baltimore city are not subject to this stay.

Judgments may be stayed by *supersedeas* for six months, sureties being given for the amount.

EXEMPTIONS. Wearing apparel, books, and tools used for trade or earning a living, and, except under executions upon judgments for seduction or breach of promise to marry, one hundred dollars' worth of other property, selected by the debtor. A chose in action, or any intangible property, real or personal, except stocks, or equitable interests in personal property cannot be taken in execution. There is no homestead exemption.

MASSACHUSETTS. — ACTIONS are begun by original writ, framed to attach the goods or estate of the defendant, or for want thereof, to take his body, or by summons, with or without an order of attachment, in either case accompanied by a separate summons to be served on the defendant, may be brought in the county where either party lives unless it is to recover real estate, when it must be brought where the land lies or in trustee process when it must be brought in the county of the trustee.

ARREST. Defendant may be arrested on mense process in actions of contract on the plaintiff making affidavit before the proper officer, — (1) that he has good cause of action, and expects to recover more than twenty dollars exclusive of all costs, and (2) that the defendant, to the best of his belief, has property not exempt, that he does not intend to apply to the payment of the debt, and (3) that he believes that the defendant intends to leave the State, so that execution if obtained cannot be served upon him. Or (instead of 2 and 3), that the defendant is an attorney-at-law, and that the debt is for money collected on behalf of the plaintiff, and that the defendant unreasonably neglects to pay the same. And, in an action of tort, except for slander and libel, by making affidavit that he believes and has reason to believe that he has a good cause of action against the defendant and that he expects to recover at least one-third the damages named in the writ, and that he believes the defendant intends to leave the State so that execution if obtained cannot be served upon him. Defendant may be arrested on execution, in an action of tort, without an affidavit, and in an action of contract, where the damages, exclusive of costs, amount to twenty dollars or more on affidavit (1) that the debtor has property not exempt which he does not intend to apply to the payment of the debt; (2) that since the debt was contracted or the cause of action accrued, the debtor has fraudulently conveyed or concealed his property with a design to secure the same to his own use or to defraud creditors; (3) that since the debt was contracted, or cause of action accrued, the debtor has lost one hundred dollars or more in illegal gambling; (4) that since the debt was contracted the debtor was willfully misspent his property so as to be able to swear that he has no property not exempt; (5) that the debtor contracted the debt with an intention not to pay it; (6) that the debtor is an attorney-at-law, and neglects unreasonably to pay money collected by him for the creditor.

On an application based upon any of these grounds, unless it appears that the debtor is about to leave the State the magistrate must first issue an order of notice to the debtor to appear and submit to examination touching his estate. If on such examination it appears that he has property not exempt he will be required to assign the same for the benefit of the creditor.

If he fails to appear or obey any lawful order of the magistrate his arrest on the execution will be authorized.

ATTACHMENT. All goods and estate, real and personal, may be attached without any affidavit, and the attachment continues as a lien for thirty days after judgment. Attachments may be dissolved, by the defendant, by giving bond to pay all damages recovered with costs, or to pay the appraised value of the property released.

GARNISHMENT same as TRUSTEE PROCESS. All actions except replevin, tort for malicious prosecution, libel and slander, and assault and battery, may be begun by trustee process; and any one, including a corporation who is indebted to the defendant, or who has property of the defendant, may be summoned except on appeal.

JUDGMENT is not a lien (*see* ATTACHMENT), but bears interest from the date of rendition, at six per cent. There is no stay of execution.

EXEMPTIONS. The homestead of a householder having a family, to the value of eight hundred dollars in the farm or lot of land and buildings owned and occupied by him as a residence provided the design to hold it as such has been duly recorded. Necessary wearing apparel for the family, one bedstead and bedding for every two persons, one iron stove used for warming the dwelling-house, and fuel for the same not exceeding twenty dollars in value, other necessary household furniture not exceeding three hundred dollars in value; Bibles, school-books, and library used by himself or family, not exceeding fifty dollars in value; one cow, six sheep, one swine, and two tons of hay; tools, implements, and fixtures necessary for business or trade, not exceeding in value one hundred dollars; materials and stock designed and necessary for his trade or business, not exceeding one hundred dollars in value; provisions necessary and procured for debtor and his family, not exceeding fifty dollars in value; one pew in church; the boats, tackle, and nets of fishermen actually used by them for their business, to the value of one hundred dollars; the uniform, arms, and accoutrements of a militia man; rights of burial and tombs, one sewing-machine not exceeding one hundred dollars in value, and shares in certain co-operative associations not exceeding twenty dollars in value. Wages to the amount of twenty dollars, unless the debt was incurred for necessaries, and then ten dollars are also exempt.

MICHIGAN.—ACTIONS are substantially the same as at common law, and are begun by original writ. The assignee of any bond, note, or other chose in action may sue in his own name.

ARREST. Personal actions on contract may be begun by a writ of *capia ad respondendum,* only to recover damages for breach of promise, or for money collected by a public officer, or for misconduct or neglect in office, or in any professional employment, on an affidavit being attached to the writ on behalf of the plaintiff, stating that he has good cause of action, and believes that he is entitled to recover more than one hundred dollars. Personal actions may also be begun by *capias* in cases of claims for damages other than those arising on contract, where an order for bail is indorsed on the writ by a judge of the court from which the process issues, or a circuit court commissioner.

ATTACHMENT. The creditor may proceed at any time before judgment, by attachment on giving bond and filing an affidavit stating the indebtedness, the amount of which must exceed one hundred dollars, and that it is due on a contract, together with one of the following causes: 1. That the defendant has absconded; or is about to abscond, or is concealed, to the injury of his creditors. 2. That defendant has assigned, concealed, or disposed of, or is about to assign or dispose of his property with intent to defraud his creditors. 3. That the defendant has or is about to remove his property from the State, with intent to defraud his creditors. 4. That the defendant fraudulently contracted the debt. 5. That he is a non-resident, and has been so for three months previous to making the affidavit. 6. That he is a foreign corporation. Attachment is a lien on real estate from the date of depositing. a certified copy in the registry of deeds for the county where the land lies. Attachment by order of court may issue on either of the grounds specified in subdivisions 1 and 2 before debt is due, in which case the affidavit must show when it will be due and the reasons for the application.

GARNISHMENT. In all actions in justices' courts or circuit courts, at the commencement of the suit, or at any time, the plaintiff may have a writ of garnishment on filing with the clerk an affidavit that he believes that any any person (naming him) has property, effects, or credits of the defendant, or is indebted to him, and that he is in danger of losing the same unless garnishment issues.

JUDGMENT bears interest at the rate of five per cent., unless it is on a written instrument embodying a different rate, in which case such rate is followed not exceeding seven per cent. Judgment becomes a lien on real property from the levy of execution, and from the time of filing a notice of such levy, containing the names of the parties, description, and date of the levy, in the office of the registry of deeds for the county where the land lies.

STAY LAWS. Defendant may have a stay of execution in justices' courts within five days after the justice is authorized to issue execution, by filing a bond with good surety, as follows: for four months after commencement of suit where the execution does not exceed fifty dollars, and six months where it does exceed fifty dollars.

EXEMPTIONS. 1. Spinning-wheels, weaving looms, and stoves put up and kept for use. 2. Seat or pew in church. 3. Cemeteries, tombs, and rights of burial while in use. 4. Arms and accoutrements required by law, and all wearing apparel. 5. Library and school-books of each member of the family, not exceeding in value one hundred and fifty dollars, and family pictures. 6. To every householder, ten sheep and fleeces (or the yarn or cloth from the same), two cows, five swine, and the provisions and fuel for the comfort of the family for six months. 7. To a householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars. 8. Tools, implements, materials, stock, apparatus, team, vehicles, horses, harness or other things which enable a person to carry on the business in which he is engaged, not exceeding in value two hundred and fifty dollars. 9. Sufficient grain, hay, feed, and roots, whether growing or otherwise, for keeping all animals, exempt for six months. 10. Sewing-machine. Also a homestead of forty acres, and the dwelling-house and appurtenances not in a city, or village, or instead, one lot in a city or village, and the dwelling-house thereon, owned and occupied as a residence, not exceeding in either case fifteen hundred dollars in value.

Only household goods, library, pictures, rights in cemeteries, one cow, and provisions and fuel for one month, not exceeding five hundred dollars in value, are exempt from execution on judgments for labor.

MINNESOTA.—Actions. All distinctions are abolished, and there is but one form for all actions, which are begun by filing a complaint and issuing summons to the defendant, and must be prosecuted by the real party in interest.

Attachments may be had at any time in actions for the recovery of money, and are sued out on affidavit specifying the cause and amount and grounds for the action, and that the defendant is a foreign corporation, or a non-resident, or has departed from the State with intent to defraud or delay creditors, or to avoid the service of the summons, or that defendant keeps himself secreted with like intent, or has assigned, secreted, or disposed of his property, or is about to do so, with intent to defraud his creditors, or that the debt was fraudulently contracted. Plaintiff must also give security for costs and damages.

Arrest for debt is abolished.

Garnishment is allowed in actions on contracts, on filing an affidavit at any time before or after judgment, stating that it is believed that any person (naming him) has property of the defendant, or is indebted to him in a sum exceeding twenty-five dollars if the action is in a court of record, or ten dollars in a justices' court.

Judgment is a lien, in the county where the cause was tried, from docketing the same, and in other counties from the date of filing a transcript in the office of the District Court, and continues a lien for ten years.

Stay Laws. Stay of execution may be had in justices' courts for a period from one to six months, in addition to ten days allowed for appeal, the time varying according to the amount of the judgment. Debtor must file a bond, with surety, conditioned to pay amount of judgment with seven per cent. interest. In district courts, on judgments for recovery of money, stay may be had for six months on giving security for payment of judgment with interest at twelve per cent.

Exemptions. 1. Family Bible. 2. Family pictures, school-books, or library, and musical instruments for use of family. 3. Seat or pew in church. 4. Lot in burying-ground. 5. Wearing apparel, beds, bedsteads, and bedding kept and used in the family, stoves and appendages, and cooking utensils, and all other household furniture not enumerated, and not exceeding five hundred dollars in value. 6. Three cows, ten swine, one yoke of oxen, and one horse, or, in lieu of oxen and horse, a span of horses or mules, twenty sheep and the wool therefrom, either raw or manufactured, food for the stock for one year, one wagon, cart, or dray, one sleigh, two plows, one drag and other farm utensils, not exceeding three hundred dollars in value. 7. One sewing-machine, one bicycle, and one type-writer. 8. Grain necessary for one year's seed, not exceeding one hundred bushels wheat, fifty bushels oats, one hundred bushels barley, one hundred bushels potatoes, ten bushels corn, and binding material used in harvesting crop. 9. Provisions and fuel for debtor and his family for one year. 10. Tools and instruments of mechanic, miner, or other person, used in carrying on his trade, and in addition, stock-in-trade, not exceeding four hundred dollars in value, and library and implements of a professional man. Also the wages of any resident laboring man or woman, or their minor children, not exceeding twenty-five dollars, for thirty days preceding the service of process. The presses, type, and other implements used in the printing or publication of a newspaper, not exceeding two thousand dollars in value, and stock-in-trade not exceeding four hundred dollars, are also exempt. Also a homestead of eighty acres, and the dwelling-house and appurtenances, not in an incorporated city, town or village, or in lieu thereof, one lot in an incorporated city, town, or village having over 5,000 inhabitants, or one-half an acre of land in a city, town, or village having less than 5,000 inhabitants, with the house thereon. By statute of 1906 as to debts contracted after March 1, 1906, homesteads within an incorporated city, village, or borough of 5,000 or more shall not exceed one quarter of an acre. Money received from insurance on life of deceased husband or father not exceeding ten thousand dollars is exempt.

MISSISSIPPI.— ACTIONS are begun by filing a declaration and issuing summons, and the forms of actions and modes of proceeding are substantially as at common law.

ATTACHMENT. Remedy by attachment applies to all liquidated debts, and to all claims for damages for breach of contract, and process issues on an affidavit filed by the creditor or his agent, stating the nature and amount of the claim, and one or more of the following causes: 1. That defendant is a foreign corporation, or a non-resident. 2. That he has removed, or is about to remove, himself or property out of the State. 3. Or so absconds or conceals himself that service cannot be made on him. 4. That he contracted the debt or incurred the obligation in conducting the business of a ship, steamboat, or other water craft in some of the navigable waters of the State. 5. Or that he has property which he conceals, and refuses to apply to the payment of his debts. 6. Or that he has assigned or disposed of, or is about to assign or dispose of, his property with intent to defraud creditors. 7. Or that he has or is about to convert his property into money in order to place it beyond the reach of his creditors. 8. Or that he fraudulently contracted the debt. 9. Or that within six months he has dealt in "futures." 10. Or that he is a public defaulter. 11. Or that he is a banker and has received deposits knowing himself to be insolvent, or has published false and fraudulent statements as to his financial condition.

Attachment may issue for a debt not due if sued on either of the last six grounds if the creditor affirm that he has just cause to suspect and verily believes that the debtor will remove himself or his effects out of the State before said debt will become payable, with intent to hinder, delay, or defraud his creditors, or that he has removed with like intent, leaving property in the State.

Plaintiff must also give security for damages and cost.

ARREST. There is no arrest for debt.

GARNISHMENT. If any third person has any property, effects, or credits of the defendant, or is indebted to him, he may be summoned as garnishee.

JUDGMENT. Judgment is a lien on all property in the county where rendered, from the date of rendition, if enrolled, and in other counties from the date of enrolling the same in the office of the clerk of the court for such county. The time of limitations for judgments is seven years.

STAY LAWS. Stay of execution is allowed in justices' courts on giving bond with surety as follows: On sums not exceeding fifty dollars, thirty days; on sums over fifty dollars, sixty days.

EXEMPTIONS. 1. Tools of a mechanic necessary for his trade. 2. Agricultural implements of a farmer necessary for two male laborers. 3. Implements of a laborer necessary for his usual employment. 4. Books of student for educational purposes. 5. Wearing apparel. 6. Library of all persons not exceeding two hundred and fifty dollars in value, and instruments of a surgeon or dentist to a like value. 7. Arms and accoutrements of militia men. 8. Globes, books, and maps of a teacher. And also of the property of each head of a family, one yoke of oxen and two work horses or mules, two cows and calves, twenty hogs, twenty sheep, colts under three years old, poultry, two hundred and fifty bushels of corn, five hundred bundles of fodder, one thousand pounds of hay, ten bushels of wheat or rice, five hundred pounds of pork or other meat, one cart or wagon and harness, one sewing machine, and household and kitchen furniture not exceeding two hundred dollars in value, growing crops, one saddle and bridle, one hundred bushels of cotton seed, forty gallons of molasses or sorghum, and one thousand stalks of Louisiana cane, sugar mill and equipments, not exceeding one hundred and fifty dollars. One hundred dollars of a laborer's or mechanic's wages are also exempt. For residents in cities, towns, and villages, there is exempt personal property to be selected by the debtor, not exceding two hundred and fifty dollars in value.

Also to every householder having a family, a homestead not exceeding one hundred and sixty acres in extent, or two thousand dollars in value.

MISSOURI. — ACTIONS are begun *first* by filing with the clerk a petition setting forth the cause of action, and the remedy sought, and the voluntary appearance of the other party, or *second,* by filing such petition, and suing out thereon a summons against the person, or an attachment against property.

ARREST. There is none for debt.

ATTACHMENT may be had, 1. Where the defendant is a non-resident. 2. Where the defendant is a foreign corporation. 3. Where the defendant conceals himself so that service cannot be had on him. 4. Where he has absconded or absented himself so that summons cannot be served on him. 5. Where defendant is about to remove his property from the State with intent to defraud, hinder, or delay his creditors. 6. Where defendant is about to remove out of the State with intent to change his domicile. 7. Where defendant has fraudulently conveyed his property so as to hinder or delay his creditors. 8. Where defendant has fraudulently concealed, removed, or disposed of his property with a like intent. 9, 10. Where he is about to fraudulently convey or conceal his property with like intent. 11. Where cause of action accrued out of the State, and the defendant has absconded, or removed his property to this State. 12. Where the damages sought are for injuries arising from commission of a felony or misdemeanor, or the seduction of a female. 13. Where the defendant has failed to pay the price of an article delivered, which by contract he was bound to pay for on delivery. 14. Where the debt was fraudulently contracted. Plaintiff must file an affidavit stating the nature and amount of his claim, and his belief that one or more of the above causes are true, and give bond for damages and costs. Attachments may be had for a debt not yet due on any of the grounds above specified, except the first four.

GARNISHMENT. The writ of attachment may be served on any one having property of, or who is indebted to the defendant, or who may be named by the plaintiff as a garnishee. The same may be done on execution, where insufficient property of the defendant is found to satisfy the claim.

JUDGMENT is a lien from the date of his rendition in the county where rendered, and becomes a lien on real estate in any other county by filing a transcript in the office of the clerk of the circuit court for such county, and it extends to real estate acquired after the rendition or filing of transcript, as well as to what was owned at the time, and it continues for three years. Judgments bear interest at six per cent., unless another rate was expressed in the contract, in which case such rate is taken, not exceeding eight per cent. There is no stay of execution except on appeal.

Exemptions. To every head of a family, 1. Ten head of choice hogs, ten head of choice sheep, and produce in wool, yarn or cloth, two cows and calves, two plows, one axe, one hoe, one set of plow gears, and all necessary farming implements for one man. 2. Two working animals and feed to the value of twenty-five dollars. 3. Spinning-wheels and cards, one loom and appliances for manufacturing cloth in and for the private family. 4. Spun yarn, cloth, and thread manufactured for family use. 5. Hemp, flax, and wool, not exceeding twenty-five pounds each. 6. Wearing apparel, four beds and bedding, and other household and kitchen furniture, not exceeding in value one hundred dollars. 7. Necessary tools and implements of trade of a mechanic. 8. Arms and accoutrements of a militia man. 9. Provisions for the family, not exceeding one hundred dollars in value. 10. Bibles and other books, lettered gravestones, and pew in church. 11. Lawyers, physicians, and clergymen may select necessary books in place of other property exempt, and doctors may select medicines. The head of a family may select, in lieu of the property mentioned in the above first two subdivisions, other property, real or personal, not exceeding in value three hundred dollars.

Every housekeeper or head of a family is also entitled to hold exempt from execution the homestead occupied by him, not exceeding in extent eighteen square rods, or in value three thousand dollars, in cities of over forty thousand inhabitants; and not exceeding in extent thirty square rods, or in value fifteen hundred dollars, in cities having less than forty thousand and more than ten thousand inhabitants; and five acres in extent, and fifteen hundred dollars in value, in cities having less than ten thousand inhabitants; and not exceeding one hundred and sixty acres, and fifteen hundred dollars in value, in the country.

To a person not the head of a family there is exempt his wearing apparel, and if a mechanic, the necessary tools and implements of his trade.

MONTANA.—Actions. There is but one form of civil action.

Arrest may be had on filing affidavit and bond in cases of fraud, or when defendant is about to leave the State with intent to defraud creditors, or when the action is for willful injury to person, character, or property; also in an action for fine or penalty, or for money or property embezzled or fraudulently misapplied by a public officer, officer of a corporation, attorney, or other person acting in a fiduciary capacity; or where defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud creditors.

Attachment. All property not exempt from execution may be attached on filing a sufficient bond, and an affidavit showing that defendant is indebted to plaintiff upon a contract, express or implied, for the payment of money, unsecured by pledge or mortgage, or the security on which has become insufficient.

Attachment may be made before the demand is due, if the defendant is leaving or about to leave the State with all his property which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or is disposing of or about to dispose of his property subject to execution, for the same purpose. This must be shown by affidavit.

Garnishment. Personal property or credits in the possession or under the control of another may be attached by service on such person a copy of the writ and notice that the property or credits are attached.

JUDGMENTS are liens on real estate of the debtor then owned or afterwards acquired, in the county where the judgment is entered, for six years from the time of docketing the same. A similar lien may be acquired on lands in any other county by filing a certified transcript of the docket with the recorder.

STAY LAWS. There is no statutory enactment on the subject but is granted by the Courts upon proper showing and upon appeal.

EXEMPTIONS. Married persons or heads of families have exempt all clothing of the debtor and family, and chairs, tables, desks, and books to the value of two hundred dollars; also all necessary household furniture, and provisions and fuel for three months; one sewing-machine, clock, and family pictures; also one horse, saddle and bridle, two cows with their calves, four swine and fifty domestic fowl, with fodder for them for three months. In addition to the above, there is exempt to a farmer his farming utensils not exceeding six hundred dollars in value, two oxen, or two horses or mules and their harness, one cart or wagon, and food for such stock for three months, two hundred dollars' worth of seeds, grain, or vegetables actually provided for the purpose of sowing or planting. The proper tools, instruments, or books of any mechanic, physician, dentist, lawyer, or clergyman, and office furniture. To a miner, his dwelling, and all his tools and machinery necessary for carrying on his avocation, not to exceed in value the aggregate sum of one thousand dollars, and one horse or mule and its harness, with food for three months, in case such stock is used in working the mine. One horse or mule, or two oxen, vehicle and harness, by which the debtor habitually earns his living, and one horse, with vehicle and harness, of physician or clergyman used in making professional visits, with food for such stock for three months. All arms, uniform, etc., required by law to be kept by any person. The wages of the debtor earned within the thirty days preceding the levy, if necessary for the use of his family residing in the State and supported wholly or partly by his labor. Unmarried persons have only wearing apparel exempt. None but *bona fide* residents can claim the benefit of this law. A homestead, not to exceed in value twenty-five hundred dollars; if agricultural land, not to exceed one hundred and sixty acres; if within a town, city or village, not to exceed one-fourth of an acre.

NEBRASKA.— There is but one form for all civil actions, which must be prosecuted by the real party in interest, and which are begun by filing a petition with the clerk of the court, and causing a summons to issue thereon.

ARREST — abolished in civil actions.

ATTACHMENT may issue in actions for the recovery of money on filing with the clerk an affidavit stating the nature and amount of the claim, that it is just, and one of the following grounds: 1. The defendant is a foreign corporation, or non-resident. 2. That he has absconded with intent to defraud creditors. 3. That he has left the county of his residence to avoid service of the summons. 4. That he so conceals himself that service cannot be made upon him. 5. That he is about to remove his property beyond the jurisdiction of the court with intent to defraud. 6. That he is about to convert his property into money to place it beyond the reach of creditors. 7. That he has property concealed. 8. That he has removed or disposed of his property, or is about to do so, with intent to defraud. 9. That he fraudulently contracted the debt.

A bond is also required, unless the defendant is a non-resident.

GARNISHMENT. In cases of attachment, if the plaintiff makes an affidavit, that he believes that any person or corporation named, and within the county, has property of the defendant (describing it), the said property, whether debts, choses in action, or other property, may be garnisheed, and the garnishee summoned to appear in court and answer in relation thereto. Also on return of an execution, unsatisfied, the judgment creditor may have a writ of garnishment.

JUDGMENT in the district court is lien on lands within the county where it was rendered, from the first day of the term at which judgment is rendered (except judgments by confession and those rendered at same term that action was commenced, which are liens from the date of rendition), and in other counties from the filing a transcript with the clerk of the court, and the lien continues for five years. Judgments of justices' and county courts are liens from the date of docketing a transcript thereof in the office of the clerk of the district court. Interest on all decrees or judgments for the payment of money, shall be from the rendition thereof, at the rate of seven per cent. till paid, unless the contract on which the judgment was entered specified a different rate, then at such rate, not to exceed ten per cent.

STAY LAWS. In district courts judgments for fifty dollars and under three months, between fifty and one hundred dollars six months, over one hundred dollars nine months.

In justices' courts, judgments for ten dollars and under sixty days, between ten and fifty dollars ninety days, between fifty and one hundred dollars six months, between one hundred and two hundred dollars nine months.

In county courts judgments for sums under two hundred dollars on the same terms as in the justices' courts, over two hundred dollars same as in district courts.

Bond with sureties is required.

No stay is allowed on judgments rendered on appeal or for money received in an official or fiduciary capacity.

EXEMPTIONS. Homestead not exceeding two thousand dollars in value, consisting of dwelling-house and one hundred and sixty acres not in an incorporated city or village, or two contiguous lots on a recorded plot in a city, town or village. If debtor has no lands, personal property to the value of five hundred dollars is exempt. Of personal property: 1. Family Bible. 2. Family pictures, school-books, and library for use in the family. 3. Seats or pew in church. 4. Lot in burying-ground. 5. Necessary wearing apparel, beds, bedding, and bedsteads necessary for the family, all stoves and apparatus, not exceeding four, cooking utensils and other household furniture not enumerated, not exceeding one hundred dollars in value. 6. One cow, three hogs, and all pigs under six months, and if the debtor be actually engaged in agriculture, one yoke of oxen, or, in lieu thereof, one pair of horses, ten sheep and the wool therefrom, manufactured or not, necessary food for stock for three months, one wagon, cart, or dray, two plows, and one drag, necessary gear, and farming implements not exceeding fifty dollars in value. 7. Provisions and fuel for six months. 8. Tools, instruments of a mechanic or miner or other person, used for carrying on his trade or business, library and implements of a professional man, head of a family, and wages of laborers, mechanics, and clerks, heads of families, for sixty days. Pension money of U. S. soldiers and sailors and properly purchased or improved therewith.

NEVADA. — ACTIONS. There is only one form of action, which is prosecuted by the real party in interest, and is begun by filing a complaint with the clerk, and issuing a summons thereon. The defendant may appear voluntarily, when he waives notice of the summons.

ARREST. Defendant may be arrested and held to bail, 1. In an action for the recovery of money or damages in an action on contract, where he is about to leave the State with intent to defraud his creditors, or where the action is for libel or slander. 2. In an action for a fine or penalty, or for embezzlement, or fraudulent misappropriation of money by a public officer of a corporation, or an attorney, agent, broker, etc., or any other person in a fiduciary capacity, or misconduct in office or professional employment. 3. In an action to recover property unjustly detained, where the property has been removed or concealed. 4. Where the defendant fraudulently contracted the debt. 5. Where the defendant has or is about to dispose of his property fraudulently. Plaintiff must make affidavit of one of the above grounds, and give security for damages and costs.

ATTACHMENT may be had at any time — 1. In an action of contract for the direct payment of money made or payable in Nevada, and not secured, or the security for which has become worthless by act of defendant. 2 In an action of contract against a non-resident. 3. In an action by residen for recovery of value of property converted by defendant. 4. Where defendant has absconded or is about to do so to defraud creditors. 5. Where he conceals himself to avoid service of summons. 6. When he is about to remove property beyond jurisdiction of court with intent to defraud. 7. When he is about to convert property into money to place it beyond reach of creditors. 8. When he has removed or disposed of property to defraud creditors. 9. When he fraudulently or criminally contracted the debt. Plaintiff must file an affidavit with the clerk of the court, stating nature and amount of his claim and one of the grounds mentioned, and give security to defendant.

GARNISHMENT. Debts and credits of the defendant in the hands of third parties may be attached on original process.

JUDGMENT is a lien in the county where it was rendered from the time of docketing, and in other counties from the date of filing a transcript, the lien continues for two years. The legal rate of interest on judgments is seven per cent. but parties may stipulate for any rate by contract which is followed in the judgment.

There is no stay of execution except on appeal and filing a bond.

EXEMPTIONS. 1. Chairs, tables, desks, and books to the value of one hundred dollars. 2. Necessary household furniture, wearing apparel, provisions and fire-wood for one month. 3. Farm utensils, also two oxen, or horses, or mules and their harnesses, two cows, one cart or wagon, and food for stock for one month, seed grain, or vegetables for planting or sowing within six months, to the value of two hundred dollars. 4. Tools and implements of mechanic or artisan necessary to his trade, and instruments and chests of a surgeon, physician, surveyor, or dentist, necessary for their profession, with their scientific or profeſsional libraries, and library of an attorney or clergyman. 5. Cabin of a miner not exceeding five hundred dollars in value, also all mining apparatus and tools to the value of five hundred dollars, and two horses, mules, or oxen, and their harness necessary to working his mine, and food for stock for one month. 6. Two oxen, horses, or mules, and their harness, and cart by which a carter, or teamster, etc., earns his living, one horse, vehicle, and harness necessary for a physician or clergyman, and food for one month. 7. Sewing-machine in actual use. 8. Arms and accoutrements of a militia man. 9. For livery stable keeper, two horses with vehicles and harness, not exceeding five hundred dollars in value. 10. A homestead not exceeding in value five thousand dollars.

NEW HAMPSHIRE. — ACTIONS are begun by writ of summons, attachment, or capias, trustee process, or replevin, in forms which are prescribed by statute.

ATTACHMENT. All property not exempt from being taken on execution may be attached, of right, without an affidavit, and the lien continues for thirty days after judgment.

ARREST. The defendant may be arrested on an action of contract if the debt or damage, exclusive of all costs, amounts to thirteen dollars and thirty-three cents, on an affidavit indorsed on the back of the writ or execution that the affiant believes that the defendant is justly indebted to the plaintiff, and that he conceals his property so that no attachment can be made, or that he has good reason to believe that he is going to leave the State to avoid payment of his debts. No sheriff, or voter on election day, is liable to arrest, nor any woman in action founded upon contract nor upon a conditional sale of clothing.

GARNISHMENT, called TRUSTEE PROCESS. All actions except replevin, trespass to the person and defamation and malicious prosecution, may be begun by *trustee process*. It is in the form of an attachment and summons, and the names of other parties may be inserted in the writ as trustees, at any time before service on the defendant.

JUDGMENT is not a lien. (*See* ATTACHMENT.) There is no stay of execution except by special order of the Court.

EXEMPTIONS. Necessary wearing apparel, beds, bedding, and bedsteads for the debtor and his family, household furniture to the value of one hundred dollars, one cooking-stove and its furniture, one sewing-machine, Bibles, school-books, and library to the value of two hundred dollars. One cow, six sheep and their fleece. One hog, one pig, and the pork of the same when slaughtered. Tools of his occupation not exceeding one hundred dollars in value. Provisions and fuel to the value of fifty dollars. Uniform and accoutrements of a militia man. Pew in a church. A lot in a burying-ground. Beasts of the plow not exceeding one yoke of oxen or a horse, and hay not exceeding four tons. Domestic fowls not exceeding in value fifty dollars. Also a homestead of the head of a family not exceeding in value five hundred dollars or of an unmarried person owning the same.

NEW JERSEY. — ACTIONS under the provisions of the common law, as modified by statute, are begun by writs of summons, capias, or warrant attachment, etc.

ARREST. A writ of capias issues on an affidavit, specifying the nature and particulars of the debt, and one or more of the following causes: 1. That the defendant is about to remove any property out of the jurisdiction of the court with intent to defraud creditors. 2. That the defendant has property or rights which he fraudulently conceals. 3. That he has, or is about to assign, remove, or dispose of his property with intent to defraud his creditors. 4. Or that the debt was fraudulently contracted. No woman can be arrested on civil process, nor can a voter be arrested on election day.

ATTACHMENT. A writ may issue on affidavit on behalf of the creditor that the defendant has absconded, and is not, to his belief, a resident of the State, or against a defendant living out of the State.

GARNISHMENT is allowed.

JUDGMENT is a lien on real estate from the entry of judgment and remains a lien for the period of limitation, twenty years, and bears interest at six per cent.

STAY LAWS. Stay of execution is allowed only in justices' courts where defendant appears on the day judgment is given and gives a bond with surety, — on sums not exceeding fifteen dollars, one month; between fifteen and sixty dollars, three months; and over sixty dollars, six months.

EXEMPTIONS. Goods and chattels, shares of stock in any corporation and personal property of every kind to the value of two hundred dollars (exclusive of wearing apparel), and wearing apparel of the debtor having a family. Also the lot and building owned and occupied by the debtor, if he is head of a family, to the value of one thousand dollars, provided the necessary steps required by statute to secure the same have been taken.

NEW MEXICO.— ACTIONS at law are commenced by filing a declaration and service of summons; the subsequent proceedings are substantially the same as at common law.

ARREST not allowed except in cases of fraud and personal injuries.

ATTACHMENT may issue if the demand amounts to fifty dollars in the following cases: 1. When the debtor is a non-resident. 2. Or has concealed himself, or absconded, or absented himself from his usual place of abode in the Territory, so that ordinary process of law cannot be served upon him. 3. Or is about to remove his property from the Territory, or has fraudulently concealed or disposed of the same, so as to hinder, delay, or defraud his creditors. 4. Or is about to fraudulently convey or assign, conceal or dispose of his property, to hinder, delay, or defraud his creditors. 5. When the debt was contracted out of the Territory, and the debtor has absconded or secretly removed his property or effects into the Territory with like intent. 6. When the defendant is a corporation whose principal office or place of business is out of the Territory, unless it has a designated agent within the Territory, on whom service of process may be made. 7. When defendant has fraudulently contracted the debt, incurred the obligation, or obtained credit from the plaintiff by false pretenses. Attachment may issue on a claim not yet matured.

Plaintiff must file an affidavit setting forth that defendant is justly indebted to him after allowing all just off-sets, and one of the above causes of attachment, and give security for costs and damages.

GARNISHMENT. Any person having property or credits of the defendant in his possession may be garnished if he is indebted to the defendant and has money credits or property belonging to him in his possession.

JUDGMENTS of the district courts for the counties of Santa Fé, San Miguel, Bernalillo, and Dona Ana, Chaves and Otero, are liens on real estate from date of rendition, if within sixty days transcript of the docket of such judgment be filed in the office of the recorder of the county in which the real estate is situated. In all other counties and on judgments of the Supreme Court, from the date of the filing of such transcript.

STAY LAW. There is no stay of execution except in case of appeal.

EXEMPTIONS. Real estate to the value of one thousand dollars, in favor of heads of families actually residing on the same; also the wearing apparel, beds, and bedding necessary for the use of the family, one cook stove and one stove to warm the dwelling with pipe, and fuel for sixty days, one cow, two swine, and six sheep and food for them for sixty days or in lieu of each specified amount of household furniture, all Bibles, hymn-books, Testaments, school-books used by the family, and pictures; provisions to the amount of fifty dollars, and household and kitchen furniture to the value of two hundred dollars, to be selected by the debtor. Also all tools and implements belonging to the debtor necessary to enable him to carry on his trade or business, whether agricultural or mechanical, to be selected by him, and not to exceed one hunderd and fifty dollars in value; one sewing-machine, one knitting-machine, and one gun or pistol; personal earnings of debtor, if necessary for support of him or his family except on debts incurred for manual labor or necessaries of life furnished debtor or family; specimens and cabinets of natural history or science not exhibited for gain; every drayman or other carrier shall hold in addition one horse, harness, dray or wagon, and every head of family engaged in agriculture two horses, or one yoke of oxen, with gearing, and one wagon; every physician, head of a family, one horse, saddle and bridle, and books, medicines, and instruments, not exceeding one hundred dollars in value; every unmarried woman, wearing apparel not exceeding one hundred and fifty dollars in value, one sewing-machine and one knitting-machine, and, if engaged in teaching music, one piano or organ, a Bible, hymn-book, psalm-book, album, and other books, not exceeding fifty dollars in value; every lawyer, head of a family, professional library, not exceeding five hundred dollars.

A head of a family, not the owner of a homestead, may hold real or personal property, in addition to the above, to the amount of five hundred dollars.

NEW YORK.— There is but one form of action, which is regulated by the code of civil procedure. It is begun by the service of a summons, specifying the names of all parties, on the defendant personally, if within the State.

ARREST. The defendant may be arrested on mesne process. 1. To recover a fine or penalty. 2. Or damages for a personal injury or an injury to property, including the taking, detaining, or conversion of the same, breach of promise to marry, misconduct or negligence in an official or professional employment, fraud, and deceit. 3. To recover property owned or held by the State or some department thereof, which defendant has wrongfully obtained, or to recover damages therefor. 4. To recover a chattel, concealed or disposed of in order to prevent the plaintiff from obtaining the same. 5. To recover on a contract other than a promise of marriage, when the defendant has been guilty of fraud in contracting the debt, or has, or is about to dispose of his property with intent to defraud his creditors. 6. To recover for money or property embezzled or fraudulently misapplied by a public officer or other person acting in a fiduciary capacity. 7. An order of arrest may also be granted against a non-resident or a resident about to depart from the State in an action wherein the judgment demanded requires the performance of some act the failure to perform which would be a contempt of court. A woman can be arrested only in the case last mentioned, or in an action for willful injury to person, character, or property.

ATTACHMENT may issue where the complaint demands judgment for a sum of money only, as damages for one of the following causes: 1. For breach of contract other than a promise to marry. 2. For wrongful conversion of personal property. 3. For any other injury to personal property in consequence of fraud, negligence, or other misconduct; on an affidavit showing sufficient cause as above, and that defendant is a foreign corporation or non-resident, or that he has departed from the State with intent to defraud creditors, or to avoid service, or keeps himself concealed with like intent, or has or is about to dispose of his property with intent to defraud creditors, or that he made a false statement in writing of his financial condition to procure credit. Plaintiff must give security for costs and damages.

JUDGMENT for an amount exceeding twenty-five dollars is a lien on the real estate of defendant from the time of docketing in the county where the land is situated and remains a lien for ten years. There is no stay of execution except in cases of appeal or by order of court.

Exemptions. Of a householder: 1. Spinning-wheels, weaving-looms, and stoves put up and for use in the dwelling-house, and one sewing-machine and appurtenances. 2. Family Bible, family pictures, school-books, and other books not exceeding fifty dollars in value. 3. Seat or pew in church. 4. Ten sheep and their fleeces, and yarn or cloth manufactured therefrom, one cow, two swine, necessary food for animals and for the household, and fuel, oil, and candles for sixty days. 5. Wearing apparel, beds, bedding and bedsteads necessary for the family, necessary cooking utensils, one table, six chairs, six knives and forks and spoons, six plates, six teacups and saucers, one sugar dish, milkpot, teapot, crane and appendages, pair of andirons, coal-scuttle, shovel, pair of tongs, lamp, and candlestick. 6. Tools and implements of a mechanic and necessary for carrying on his trade not exceeding twenty-five dollars in value. In addition, when debtor is a householder, or has a family for whom he provides, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding two hundred and fifty dollars in value, together with necessary food for the team for ninety days, and groceries provided for family use, are exempt except in actions for wages by domestic servants or for purchase money of some article exempt. A burying-ground actually occupied and not exceeding a quarter of an acre. Homestead of a householder, having a family, owned and occupied by him to the value of one thousand dollars, provided it is recorded as homestead property in the office of the clerk of the county where it is situated, but it is not exempt in suits for taxes, purchase money, or debts contracted before record.

NORTH CAROLINA.—Actions. The distinctions between law and equity and the forms of actions are abolished, and there is but one form of action, which is begun by issuing a summons from the clerk of the court, and which is prosecuted in the name of the real party in interest, except in case of executors, etc.

Arrest. Defendant may be arrested and held to bail, where he is a non-resident or is about to remove from the State, in an action for damages not on contract, or for injury to person or character, or for injuring, wrong-taking, detaining, or converting of property. 2. In an action for a fine or penalty, or for seduction, or for money received or property embezzled, or fraudulently misappropriated by a public officer, attorney, solicitor, officer of a corporation, factor, agent, or broker, or for misconduct or negligence in office or professional employment. 3. In an action to recover personal property unjustly detained and concealed so that the sheriff cannot find it. 4. Where the debt was fraudulently contracted, or where defendant fraudulently conceals or disposes of the property for which action is brought, or when the action is for damages for fraud or deceit. 5. Where defendant has removed or disposed of his property, or is about to do so, with intent to defraud creditors. Plaintiff must make affidavit of the cause of action, and showing one of the above grounds, and give security to defendant. No woman can be arrested except for willful injury to person, character, or property.

Attachment is allowed at the time of issuing summons, or at any time thereafter, in an action for the recovery of money only, or for damages for breach of contract for the wrongful conversion of personal property, or injury to real or personal property through negligence or other wrongful act, against a foreign corporation or a non-resident, or against a defendant absconding or concealing himself, or who is about to remove his property from the State, or who has assigned, secreted, or disposed of his property or is about to do so, with intent to defraud creditors, on an affidavit specifying the cause of action, the amount, grounds, and one of the above reasons, and giving security for damages and costs.

GARNISHMENT. Garnishment is allowable by original attachment, and service of summonses on the persons supposed to be indebted to the defendant.

JUDGMENT is a lien on real estate in every county from the time of docketing or filing a transcript thereof in such county, and remains a lien for ten years; it bears interest at six per cent.

STAY LAWS. Stay of execution is allowed on judgments in justices' courts as follows: On sums not exceeding twenty-five dollars, one month; between twenty-five and fifty dollars, three months; between fifty and one hundred dollars, four months; over one hundred dollars, six months. Defendant must give bond with surety.

EXEMPTIONS. Homestead occupied by the debtor to the value of one thousand dollars; also personal property, to be selected by the debtor, to the value of five hundred dollars except on claims for purchase price of homestead.

NORTH DAKOTA.—ACTIONS are commenced by service of summons, and must be prosecuted by the real party in interest.

ARREST. Defendant may be arrested: 1. In action for recovery of damages for injury to person, or character, or for injuring or wrongfully taking, detaining or converting property. 2. In action for money or property embezzled or fraudulently misapplied by a public officer, officer of a corporation, or attorney, agent or other person in fiduciary capacity. 3. In action to recover possession of personal property concealed or disposed of so as to prevent its being found and taken by sheriff. 4. When defendant has been guilty of fraud in contracting debt or in concealing or disposing of property sued for, or in action for damages for fraud or deceit. 5. When defendant has removed or disposed of property, or is about to do so, to defraud creditors.

Plaintiff must file affidavit setting forth ground of application and give security. No female can be arrested except for willful injury to person, character, or property. Imprisonment for debt is abolished.

ATTACHMENT. Property of defendant may be attached in action on contract or judgment for recovery of money only or for conversion of personal property or for damages whether arising out of contract or otherwise. 1. When defendant is a non-resident or foreign corporation. 2. When he has absconded or conceals himself. 3. When he has or is about to remove property from the State, not leaving enough for payment of his debts. 4. Where he has disposed of his property or is about to do so to defraud creditors, or hinder or delay them. 5. Where he is about to remove his residence from the county without giving security on demand for the debt sued on. 6. When debt was incurred for property obtained under false pretenses. 7. When defendant is about to remove property from the State to defraud creditors. 8. Goods may be attached on suit to recover the purchase price.

GARNISHMENT. On filing affidavit that third person has property of the defendant or is indebted to him, such property or debts may be garnished.

JUDGMENT is a lien on defendant's real estate in every county where it is docketed, for ten years from the time of docketing in the county where rendered.

EXEMPTION. A homestead not exceeding in value five thousand dollars, provided claimant be the head of a family. All family pictures, pew, burial lot, family Bible, and school books, family library not exceeding in value one hundred dollars, wearing apparel of debtor and family, provisions and fuel for one year, and other personal property to be selected by the debtor not exceeding in value one thousand dollars.

Instead of the one thousand dollar exemption debtor may select the following: books and musical instruments for family use not exceeding in value five hundred dollars, household and kitchen furniture used by debtor and family, not exceeding five hundred dollars, three cows, ten swine, one yoke of cattle and two horses or mules, or two yoke of cattle or two pair of horses or mules, one hundred sheep and their lambs under six months old, and all wool of same and cloth or yarn made therefrom, food for animals for one year, one wagon, one sleigh, two plows, one harrow, and farming tools and tackle not exceeding three hundred dollars; the tools and implements of a mechanic used for the purpose of his business, and stock in trade not exceeding two hundred dollars; library and instruments of a professional man not exceeding in value six hundred dollars.

OHIO.—Actions. All distinctions are abolished; must be prosecuted in the name of the real party in interest, except in case of executors, etc., and are begun by filing with the clerk of the court a petition and a precipe, stating the names of the parties and demanding a summons thereon.

Arrest. Defendant may be arrested on affidavit made before any judge, clerk of the court, or justice of the peace, stating the nature and amount of the claim, that it is just, and one of the following grounds: 1. That the defendant has removed or is about to remove, his property out of the jurisdiction of the court with intent to defraud creditors. 2. That he has begun to convert his property into money with intent to place it beyond the reach of his creditors. 3. That he has property or rights that he fraudulently conceals. 4. That he has assigned, removed, or disposed of his property, or has begun to do so, with intent to defraud creditors. 5. That the debt was fraudulently contracted. 6. That the money or thing for which recovery is sought was lost by gaming or by a wager. The affidavit must also state the facts claimed to justify belief in the ground alleged, and the order may issue at any time before judgment. Plaintiff must also give security for damages. Defendant may also be arrested on any judgment for payment of money on grounds substantially the same as above, and also when he was arrested before judgment and has not been discharged as an insolvent debtor.

Officers and soldiers in the revolutionary war, and all females, are privileged from arrest on all process, mesne or final, for any debt or demand founded on contract.

Attachment is granted in civil action for recovery of money on an affidavit stating the nature, amount, and justice of the cause, and one of the following causes: 1. That the defendant is a foreign corporation or a non-resident. 2. Or has absconded with intent to defraud creditors. 3. Has left the county of his residence to avoid service of the summons. 4. So conceals himself that service cannot be had on him. 5. Is about to remove his property beyond the jurisdiction of the court, to defraud his creditors. 6. Is about to convert his property into money to place it beyond the reach of his creditors. 7. That he has property or rights of action which he conceals. 8. Has assigned or removed, or is about to assign or remove his property with intent to defraud creditors. 9. That the debt was fraudulently or criminally contracted. 10. That the claim is for work or labor or for necessaries. But attachment is not to issue on the ground that the defendant is a foreign corporation or non-resident, for any claim other than a debt or demand arising on a contract, judgment, or decree, or for causing death by a negligent or wrongful act. Security must be given unless defendant is a foreign corporation or non-resident. Attachment may be granted in certain cases before debt is due.

Garnishment. If the plaintiff, or some one on his behalf, shall make oath in writing that any person or corporation named has any property of the defendant (describing it), such person or corporation may be summoned as garnishee.

Judgment is a lien on real estate within the county where rendered, from the first day of the term, except judgments by confession, and those rendered at term when action is commenced, which bind from the date when they are rendered; in other counties from date of filing transcript. Lien continues for five years, but execution must issue on the judgment within one year, or the lien is lost, as against any other judgment creditor. Judgment bears interest at the same rate as the contract on which it was rendered.

Stay Laws. Stay of execution is allowed only in justices' courts on giving bond with surety within ten days after judgment was given, as follows: On sums not exceeding five dollars, sixty days; between five and twenty dollars, ninety days; between twenty and fifty dollars, one hundred and fifty days; of fifty dollars and over, two hundred and forty days.

Exemptions. The homestead of the head of a family to the value of one thousand dollars, or if he does not own any homestead, he may select personal or real property to the value of five hundred dollars in addition to the amount of personal property otherwise exempt, viz: 1. Wearing apparel, beds, bedding, and bedsteads necessary for the family, one cooking-stove, and one stove used for warming, and fuel for sixty days. 2. One cow, or, if the debtor has no cow, household furniture to the value of thirty-five dollars, two swine or their pork, or, in lieu thereof, household property to the value of fifteen dollars, six sheep and the wool and cloth therefrom, or household furniture to the value of fifteen dollars, and food for such animals, if any, for sixty days. 3. Bible, hymn-books, psalm books, testaments, and school-books, and family pictures. 4. Provisions actually provided to the value of fifty dollars, and other articles of household and kitchen furniture to the value of fifty dollars. 5. One sewing-machine, one knitting-machine, tools and implements for trade not exceeding one hundred dollars in value. 6. Personal earnings of the debtor or his minor children for three months previous to the rendition of judgment, on an affidavit that it is necessary for the support of the family. 7. All articles, specimens, and cabinets of natural history or science, unless the same are used for a show or for making money.

In addition to the above, to a head of a family who is a drayman, one horse, harness, and dray; or who is engaged in agriculture, one horse or yoke of cattle, the necessary gear, and one wagon; or, if a person practicing medicine, one horse, saddle and bridle, and books, medicines, and instruments not exceeding in value one hundred dollars.

Of the property of an unmarried woman — wearing apparel to the value of one hundred dollars, sewing-machine, knitting-machine, Bible, hymn-book, psalm book, and other books to the value of twenty-five dollars.

OKLAHOMA.—There is no distinction between law and equity, and but one form of civil action.

Arrest is not allowed in civil actions.

Attachment may be granted in civil action for recovery of money on executing and filing a bond to the defendant and filing affidavit showing nature and amount of plaintiff's claim, and that it is just, and one of the following grounds: 1. That the defendant is a foreign corporation or non-resident. 2. Has absconded with intent to defraud creditors. 3. Has left county of residence to avoid service of summons. 4. Conceals himself so that summons cannot be served on him. 5. Is about to remove property beyond jurisdiction of court to defraud creditors. 6. Is about to convert property into money to place it beyond reach of creditors. 7. Has property or rights of action concealed. 8. Has assigned, removed, or disposed of property, or is about to do so to defraud creditors. 9. Fraudulently contracted debt sued on. 10. That damages sought are for injuries resulting from commission of felony, misdemeanor, or seduction. 11. Or for price of article agreed to be paid for on delivery.

Attachment may be made before debt is due when defendant has been guilty of fraud.

GARNISHMENT. May issue on affidavit stating amount of claim, that plaintiff believes that garnishee has property of defendant in his possession not exempt from execution, or is indebted to him and that defendant has not property sufficient to satisfy plaintiff's claim.

JUDGMENTS are liens on debtor's lands in the county where rendered from first day of the term when rendered, and in other counties from date of filing transcript, and continue in force five years.

STAY LAWS. Stay of execution is allowed on judgments rendered by justices of the peace as follows: between twenty and thirty dollars, thirty days; between thirty and fifty dollars, sixty days; between fifty and one hundred dollars, ninety days.

EXEMPTIONS. To head of family, a homestead of not exceeding one hundred and sixty acres with improvements, or, in a city, a lot or lots not exceeding one acre with improvements; all household furniture; cemetery lot; farming implements used on homestead; tools or apparatus used in any trade or profession; family library, family portraits, pictures, and wearing apparel; five milch cows and their calves; one yoke of oxen with yokes and chains; two horses or two mules and one wagon, cart, or dray; one carriage or buggy; one gun; ten hogs; twenty sheep; saddles, bridles, and harness; all provisions and forage for home consumption and use of exempt stock for one year; current wages or earnings for personal or professional services earned within ninety days. To a person not the head of a family, cemetery lot, wearing apparel, tools, apparatus, or books belonging to trade or profession, one horse, bridle, and saddle, or one yoke of oxen, and current wages for personal services.

OREGON.—ACTIONS. All distinctions are abolished; there is but one form, which is prosecuted in the name of the real party in interest, except in case of executors, administrators, etc., and which is begun by filing a complaint with the clerk of the court, and causing at any time a summons to issue thereon to be served on the defendant.

ARREST. Defendant may be arrested at any time before judgment, on filing an affidavit with the clerk of the court. 1. In an action for the recovery of money, or damages on a contract when the defendant is a non-resident, or is about to remove from the state, or when the action is for injuries to person or character, or injuries to, or wrongful taking, detaining, or converting of property. 2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled or fraudulently misappropriated, or converted by a public officer or attorney, or officer of a corporation, as such, or by a factor, agent, or broker, or for misconduct or neglect in office, or in professional employment. 3. In an action to recover possession of personal property detained, when it is concealed so that it cannot be found by the officer, with intent to deprive the plaintiff of the use thereof. 4. Where defendant was guilty of fraud in contracting debt or in concealing or disposing of property for which action is brought. 5. Where defendant has removed, or disposed of his property, or is about to do so, with intent to defraud creditors. No arrest of females except for injury to person, character, or property.

ATTACHMENT. Defendant's property may be attached at the time of issuing the summons, or at any time thereafter, on plaintiff's filing a bond and an affidavit showing, 1, that defendant is indebted to him upon a contract for the direct payment of money, specifying the amount due above all legal set-offs; 2, that the payment has not been secured by mortgage, or that, if so secured security has been rendered nugatory by act of defendant, etc., or that defendant is a non-resident; and 3, that the sum claimed is a *bona fide* debt, and that attachment is not sought and action prosecuted to hinder, delay, or defraud creditors.

GARNISHMENT is allowed on original process by attachment; there is no distinctive process.

JUDGMENT is a lien on real estate in the county where it was rendered, from the date of docketing, and in other counties from the filing a transcript in such county, and continues as such for ten years, and bears interest at six per cent. unless a different rate was contracted for, when such rate is taken, not exceeding ten per cent.

There is no stay of execution in Oregon, except on appeal and filing a bond.

EXEMPTIONS. 1. Books, pictures, and musical instruments to the value of seventy-five dollars. 2. Necessary wearing apparel of the debtor to the value of one hundred dollars, or, if a householder, clothing for each member of the family to the value of fifty dollars. 3. Tools, implements, apparatus, team, vehicle, harness, or library necessary for the trade, occupation, or profession of the debtor to the value of four hundred dollars, and sufficient food for the team for sixty days. 4. Of property of a householder, ten sheep and one year's fleece, or the yarn or the cloth thereof, two cows, five swine; household goods, furniture, and utensils to the value of three hundred dollars; food for animals for three months, and for the family for six months, and a seat or pew in church. All State, county, or town property. For each white male citizen above the age of sixteen, one gun and one revolver. 5. Homestead, the actual abode of and owned by a family or some member thereof, is also exempt.

PENNSYLVANIA.— ACTIONS. Personal actions, except in some special cases, are begun by a summons; there are practically only two classes of action, assumpsit and trespass.

ARREST. A writ of capias may issue in actions of tort. No person can be arrested in an action to recover money due on a judgment or a contract, or for damages for the non-performance of a contract except in proceedings, as for contempt, to enforce civil process; in actions for fines or penalties, for breach of promise of marriage, for money collected by a public officer, or for misconduct or neglect in office or professional employment. But after bringing suit, before or after judgment, defendant may be arrested, on affidavit that he is about to remove his property beyond the jurisdiction of the court to defraud creditors, or has done so, or that he has property fraudulently concealed, or rights of action or interest in public or corporate stocks, which he refuses to apply to the payment of his debts, or that he fraudulently contracted the debt. In these cases affidavit must be made of the necessary facts.

ATTACHMENT. Property of the defendant may be attached, if the plaintiff makes affidavit that the defendant is justly indebted to him in a sum exceeding one hundred dollars, stating the nature and amount of the claim, and that defendant is about to remove his property out of the jurisdiction of the court, with intent to defraud creditors, or that he has property or rights that he fraudulently conceals, or that he has assigned, disposed of, or concealed his property, or is about to do so, with intent to defraud creditors, or that he fraudulently contracted the debt. The property of non-residents may be attached without affidavit, except in actions *ex delictu*. Plaintiff must give security.

GARNISHMENT. Attachment may issue after judgment, on the property or debts due the defendant in the hands of third parties, and garnishee may be summoned in.

JUDGMENT bears interest at six per cent., and is a lien on real estate in the county where rendered. It may be transferred to other counties and continues a lien for five years, but after that may be revived by *scire facias*.

STAY LAWS. Stay of execution is allowed on judgments in actions of contract, by giving bond with surety, or offering sufficient unincumbered real estate, as follows: On sums not exceeding two hundred dollars, six months; between two hundred and five hundred dollars, nine months; over five hundred dollars, one year. In justices' courts, as follows: On sums not exceeding twenty dollars, three months; between twenty and sixty dollars, six months; over sixty dollars, nine months. There is no stay on judgments for one hundred dollars or less, for wages of manual labor.

EXEMPTIONS. Property, real or personal, to the value of three hundred dollars, exclusive of wearing apparel of the defendant and his family, and all Bibles and school-books in use in the family, and sewing-machine. There is no exemption in judgment for wages of manual labor for one hundred dollars or less, or for board for four weeks or less. There is no homestead exemption.

RHODE ISLAND.— ACTIONS are begun by original writ of summons, arrest, or attachment. The common law, as modified by statute, prevails.

ARREST. Writ of arrest may issue in action for any cause except recovery of debt or taxes. 2. To recover debts contracted before July 1, 1870. 3. In any action of contract on affidavit annexed to the writ, that the claim is just and that the plaintiff expects to recover enough to give the court jurisdiction; and also, either that defendant is about to leave the State without leaving sufficient property to be taken on execution, or that the defendant committed actual fraud in contracting the debt or in concealing or disposing of his property. Plaintiff, after commencement of the action, may sue out the writ to arrest at any time before judgment, by making a similar affidavit, and arrest on execution may be ordered by court on the same grounds. No bond is required. No female can be arrested in action of contract, nor any voter on election day, or the day preceding or following.

ATTACHMENT. Writ of attachment issues against property of the defendant and personal property in the hands of third parties, as trustees, on an affidavit by the plaintiff, his agent or attorney, endorsed on or annexed to the writ, that plaintiff had a just claim against defendant that is due, upon which plaintiff expects to recover a sum sufficient to give jurisdiction to the court to which the writ is returnable and upon giving a bond.

GARNISHMENT issues by original writ of attachment against personal property of the defendant in the hands of a third party. (*See* ATTACHMENT.)

JUDGMENT is not a lien on real estate. It bears interest at six per cent. There is no stay of execution, except for cause shown.

EXEMPTIONS. 1. Wearing apparel of the defendant and his family, if he has one. 2. Working tools of the debtor necessary to his occupation to the value of two hundred dollars. 3. Household furniture and stores of a housekeeper, including beds and bedding, not exceeding three hundred dollars in value. 4. Bible, school and other books in use in his family, not exceeding three hundred dollars in value. 5. One cow, and one and a half tons of hay of a housekeeper. 6. One hog, one pig, and the pork of the same, of a housekeeper. 7. Uniform and accoutrements of a militia man. 8. Pew in church. 9. Lot in burying-ground. 10. Mariners' wages due or accruing. 11. Debts secured by bills of exchange or negotiable promissory notes. 12. Salary or wages to the amount of ten dollars, when the cause of action is not for necessaries. 13. Wages of wife or minor children of debtor. There is no homestead exemption.

SOUTH CAROLINA.—ACTIONS. All distinctions between actions are abolished, and there is but one form for all civil actions, prosecuted in the name of the real party in interest, except in case of executors, administrators, etc., and begun by the service of a summons.

ARREST. Defendant may be arrested on affidavit on the part of the plaintiff. 1. In an action for money received or property embezzled or fraudulently misappropriated by a public officer, or an attorney, or officer or agent of a corporation, as such, or factor, agent, or broker, or for any misconduct or neglect in official or professional employment. 2. In an action to recover possession of personal property fraudulently detained, or when the property is so disposed of that it cannot be found by the sheriff, and with intent to deprive plaintiff of benefit of the same. 3. Where the defendant was guilty of fraud in contracting the debt or in concealing or disposing of the property sued for, or where the action is for damages for fraud or deceit. 4. Where the defendant has removed or disposed of his property, or is about to do so, with intent to defraud creditors. 5. Suit may be brought on a note, etc., not yet due, and arrest made on affidavit by plaintiff that defendant, being a resident of the State, is about to abscond or depart from the State, and that plaintiff had no knowledge of his intent to leave the State when he took the note. No female can be arrested.

ATTACHMENT may issue in an action of contract to recover money or property or damages for the wrongful conversion or detention of personal property or for injuries to person or property, where the defendant is a foreign corporation or a non-resident, or has absconded or concealed himself, or is about to remove his property from the State, or has assigned, disposed of, or secreted his property, or is about to do so, with intent to defraud creditors, on an affidavit stating one of the above grounds, and giving security to defendant. Attachment may also issue against owner, agent, or master of sailing vessel for pilotage fees on affidavit stating amount due and that vessel is about to depart from the State. Attachment will lie for a debt not due if fraud be shown in evading the debt.

Garnishment is effected only by attachment.

Judgment is a lien on real property for ten years; and judgments for money bear interest at seven per cent.

There is no stay of execution except on appeal and giving bond.

Exemptions. Homestead of the head of the family not exceeding in value one thousand dollars with the yearly products thereof, and personal property to the amount of five hundred dollars.

SOUTH DAKOTA.— Actions are commenced by service of summons and must be prosecuted by the real party in interest.

Arrest. An order of arrest may be obtained in the following cases on plaintiff's filing an affidavit setting forth the facts on which it is asked, and furnishing security, viz.: In an action for damages not founded on contract, where defendant is a non-resident, or is about to remove from the State, or where action is for injury to person or character or for injury to or wrongfully taking, detaining, or converting property; in an action for a fine or penalty or on a promise to marry, or for money received on property embezzled, or fraudulently misapplied by a public officer, attorney, or other person, in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment, in an action for recovery of personal property disposed of or concealed to prevent its being taken by the sheriff, or where debt was fraudulently contracted, or where debtor has removed his property or is about to do so to defraud creditors. Arrest for debt is abolished. No female can be arrested except on action for willful injury to person, character, or property.

Attachment may issue in action on contract for recovery of money only, or in action for wrongful conversion of personal property, against a foreign corporation or non-resident or a defendant who has absconded or conceals himself, or is about to remove his property from the State, or has disposed of his property, or is about to do so with intent to defraud creditors, or is about to remove from the county, to permanently change residence without giving security for debt after demand.

Plaintiff must file affidavit stating ground of claim and amount and one of causes above stated and give security, and give defendant written notice of property attached.

Attachment may issue in certain cases before maturity of claim.

Garnishment only in cases before Justice of the Peace.

Judgment is a lien on defendant's real estate in every county where it is docketed, for ten years from time of docketing in the county where rendered.

Exemption. Homestead not exceeding one acre in a town plot, or one hundred and sixty acres elsewhere, with house and buildings, to the extent of five thousand dollars. All family pictures, pew, burial lot, family Bible and school-books, family library not exceeding in value two hundred dollars, wearing apparel of debtor and family, provisions and fuel for one year, and other personal property to be selected by debtor not exceeding in value seven hundred and fifty dollars.

Instead of the seven hundred and fifty dollars exemption, debtor, the head of a family may select the following:— Books and musical instruments for use of family not exceeding two hundred dollars, household and kitchen furniture not exceeding two hundred dollars, two cows, five swine, two yoke of oxen or one span of horses or mules, twenty-five sheep and their lambs under six months old, and all wool from the same or cloth or yarn manufactured therefrom, food for animals for one year, one wagon, one sleigh, two plows, one harrow, farming machinery and utensils not exceeding twelve hundred and fifty dollars; tools and implements of a mechanic used for his trade or business, and stock in trade not exceeding two hundred dollars; library and instruments of a professional man not exceeding three hundred dollars. Avails of life insurance received by widow or children are exempt to value of five thousand dollars.

TENNESSEE.—ACTIONS. There is only one form for all actions, which are begun by a summons issued by the clerk of the court and directed to the sheriff. Plaintiff must usually give security for costs.

ARREST. There is no arrest for debt in Tennessee.

ATTACHMENT may be had at the commencement of the action for a debt or demand due or after action begun, either before or after judgment, for any cause, where, 1, the debtor is a non-resident; 2, or is about to remove himself or his property out of the State; 3, or has removed out of the county of his residence privately, or is about to do so; 4, or has concealed himself so that process cannot be served on him; 5, has absconded or concealed himself or his property; 6, has fraudulently disposed of his property or is about to do so; 7, where any person liable for a debt, and a non-resident, dies leaving property within the State; 8, where defendant is a resident of the county, but summons is returned "not found in the county." The plaintiff or his agent must make an oath in writing of the nature and amount of the debt, and one of the above causes, and give security to the defendant.

GARNISHMENT. Where property, choses in action, or effects of the defendant are in the hands of a third party, or such party is indebted to the defendant, attachment may issue by garnishment. Also on execution, where the sheriff cannot find sufficient property to satisfy the execution.

JUDGMENT is a lien on real estate, in the county where rendered, from the date of rendition, and in other counties from the date of registration of a certified copy; but the lien is lost unless execution is taken out and the land sold within twelve months after rendition. Judgment bears interest at six per cent.

STAY OF EXECUTION. On judgments before a justice of the peace execution will be stayed for eight months on giving security for debt, interest, and costs.

EXEMPTIONS. Ninety per cent. of the income already earned of a resident 18 years of age or over, earning or receiving $40.00 or under per month is exempted, and $36.00 when the amount exceeds $40.00. Personal property of the head of a family, two beds, bedsteads and bedding, and for every three children one additional bed, etc.; the bedsteads not to exceed twenty-five dollars in value; two cows and calves, and if the family consists of six persons or more, three cows and calves; one dozen knives and forks, dozen plates, six dishes, set of tablespoons, set of teaspoons, tray, two pitchers, waiter, coffee-pot, tea-pot, canister, cream-jug, one dozen cups and saucers, dining-table, and two table cloths, dozen chairs, bureau, not to exceed forty dollars in value, safe or press, wash-basin, bowl and pitcher, washing-kettle, two washing-tubs, churn, looking glass, chopping-axe, spinning wheel, loom and gear, pair cotton cards, pair wool-cards, cooking-stove and utensils, set ordinary cooking utensils, meal-sieve, wheat-sieve, cradle, Bible and hymn-book, and all school-books, two horses or two mules, or one horse and one mule, or one horse or mule, and one yoke of oxen and gear, two-horse or one-horse wagon to the value of seventy-five dollars, and the harness, man's saddle, woman's saddle, two riding-bridles, twenty-five barrels of corn, twenty bushels of wheat, five hundred bundles of oats, five hundred bundles of fodder, one stack of hay to the value of twenty dollars; if the family is less than six persons, one thousand pounds of pork slaughtered or on foot, or six hundred pounds of bacon; or if the family consists of more than six persons, twelve hundred pounds of pork, or nine hundred pounds of bacon, poultry to the value of twenty-five dollars, fifty sheep and the fleeces from same, twenty-five stands of bees and the products of same; six cords of wood or one hundred bushels of coal, one sewing-machine, one hundred gallons of sorghum molasses, one hundred pounds soap, fifty pounds lard, one hundred pounds flour, fifty pounds salt, one hundred pounds beef or mutton, twenty pounds coffee, fifty pounds sugar, three bushels meal, one bushel dried beans, one bushel dried peas, fifty bushels of Irish potatoes, fifty bushels sweet potatoes, ten bushels turnips, one pair andirons, one clock, one pound each of pepper, spice, and ginger, canned fruit put up for the family not exceeding twenty dollars in value, twenty bushels of pea-nuts, three strings of red peppers, four gourds, carpet in use, not exceeding twenty-five dollars in value, and two hundred bushels of cotton-seed. If the head of the family is engaged in agriculture, two plows, two hoes, grubbing-hoe, cutting-knife, harvest-cradle, plow-gears, pitchfork, rake, three iron wedges, five sheep, ten stock hogs. Also the tools of a mechanic, and if he be the head of a family, two hundred dollars' worth of lumber or material or products of his labor. One gun to every male person, and to every female who is the head of a family. To a head of a family, fifty pounds of picked cotton, twenty-five pounds wool, leather for winter shoes; also three hundred pounds of tobacco in the hands of the producer, and thirty-five dollars' worth of roughness consisting of oats, fodder, or hay. A homestead of the head of a family of the value of one thousand dollars.

TEXAS.—ACTIONS are begun by petition filed with the clerk of the court upon which a citation issues to the defendant.

ARREST for debt is abolished.

ATTACHMENTS may issue upon an affidavit by the plaintiff or his attorney, stating that the debt is a just one, and the amount of the same, together with one of the following grounds: 1. That defendant is a non-resident or a foreign corporation. 2. That he is about to remove out of the State, and has refused to pay or secure plaintiff's claim. 3. Or that he secretes himself, so that process cannot be served on him. 4. That he has secreted his property for the purpose of defrauding creditors, or is about to do so. 5. That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts. 6. That he is about to remove his property beyond the jurisdiction of the court, with intent to defraud creditors. 7. That he is about to transfer or secrete his property, or has done so, with intent to defraud creditors. 8. That he is about to convert his property into money, for the purpose of defrauding creditors. 9. That the debt is due for property obtained under false pretences. And he must also swear that the attachment is not sued out for the purpose of injuring the defendant, and that the original petition is true, and give security to defendant.

GARNISHMENT may issue after suit brought on affidavit of plaintiff that the amount claimed is just, due, and unpaid; that he does not know of any property of defendant not exempt, sufficient to satisfy the claim, and that he believes that any parties (naming them) are indebted to the defendant, or have property or effects of the defendant; also, where judgment has been rendered, or attachment sued out on affidavit.

JUDGMENT is a lien on real estate in the county where it was rendered, and in other counties it becomes such by filing a transcript. The lien continues for ten years, but unless execution issues within twelve months it ceases to bind the property.

STAY LAWS. Stay of execution is allowed only in justices' courts for three months, on giving bond with good security.

EXEMPTIONS. A homestead of two hundred acres not in any town or city, or a lot or lots, in a city, town, or village, not to exceed five thousand dollars in value. Also to every head of a family, all household and kitchen furniture, all implements of husbandry, tools or apparatus of trade or profession, family library, and family portraits and pictures, five milch cows and calves, two yoke of oxen with yokes and chain, two horses and one wagon, one carriage or buggy, one gun, twenty hogs, twenty head of sheep, all provisions and forage for home use, bridles, saddles, and harness necessary for the use of the family, and a lot in a cemetery; to every person not the head of a family, a horse, bridle, saddle, necessary wearing apparel, tools, apparatus, and books of his private library, and burial lot.

UTAH.—ACTIONS. There is but one form of civil action, which is commenced by the filing of a complaint and the issuing of a summons.

ARREST. No person can be arrested in a civil action except an absconding debtor. Plaintiff must show by affidavit that case is within this provision, and furnish written undertaking, with two sureties for not less than five hundred dollars, to pay all costs and damages incurred by defendant in case the arrest be unlawful.

ATTACHMENT. Attachment may issue at commencement of the suit or at any time thereafter, on filing with the clerk of the court an affidavit showing that defendant is indebted to plaintiff, specifying the amount above all legal set-offs, and whether upon a judgment or an express or implied contract, and that the same has not been secured by mortgage or pledge, or that if originally so secured, that the security has become valueless without any act of the plaintiff, that the same is an actual, *bona fide*, existing demand, due and owing from defendant to plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor, and specifying one or more of the following causes: That the defendant is a non-resident, or has departed or is about to depart from the Territory to the injury of his creditors, or stands in defiance of an officer, or conceals himself so that process cannot be served upon him, or has assigned, disposed of, or concealed any of his property with intent to defraud his creditors, or is about to do so, or has fraudulently contracted the debt or incurred the obligation on which the action is brought. Plaintiff must also give security for costs and damages.

GARNISHMENT. Property or debts due to defendant from third persons may be garnished.

JUDGMENTS are liens upon real estate owned by the defendant in the county, for eight years from the time of docketing, and may be made liens in any other county, from the time of filing a transcript with the recorder.

STAY LAWS. There is no provision for the stay of execution, except by appeal.

EXEMPTIONS. Chairs, tables, desks, and books of the value of two hundred dollars; library and musical instruments, necessary household furniture, etc., of the value of three hundred dollars; sewing-machine, carpets, family paintings, provision on hand for three months, two cows with their sucking calves, and two hogs and all sucking pigs, wearing apparel, beds and bedding; farming implements of the value of three hundred dollars; two oxen, horses, or mules, and harness, and food for animals for sixty days; a cart or wagon; seed, grain, or vegetables, not exceeding in value two hundred dollars; crops not exceeding two hundred dollars; tools and implements of a mechanic or artisan, not exceeding in value five hundred dollars; the seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor, or dentist, with their libraries, and the law libraries and office furniture of attorneys and judges, and libraries of ministers, type-writing machine of stenographer, etc.; printing presses, type, etc., of printer, not exceeding five hundred dollars; the cabin of a miner, not exceeding five hundred dollars in value, and his tools and appliances not exceeding in value five hundred dollars; two oxen, horses or mules, and harness and vehicle by which a cartman, huckster, teamster, or other laborer habitually earns his living; and one horse, harness, and vehicle of a physician, surgeon, or minister, with feed for the horse for three months; one-half the debtor's earnings for personal services within thirty days preceding the levy if he has a family dependent on him; life insurance policies and benefits where the annual premiums do not exceed five hundred dollars; all arms, ammunition, and accoutrements required by law to be kept; all public buildings and churches; to the head of a family, a homestead to be selected by the debtor, not exceeding fifteen hundred dollars in value, and the further sum of five hundred dollars to his wife, and two hundred and fifty dollars for each other member of his family.

VERMONT. — ACTIONS. The common law is in force, and the old actions are in use. Process is by writ of summons or attachment.

ARREST. Defendant may be arrested in any action of tort for want of attachable property and in an action of contract, or on execution issued in an action of contract, on an affidavit that the affiant believes that defendant is about to abscond or remove from the State, and has secreted his property to the amount of twenty dollars not exempt. Females cannot be arrested in actions of contract.

ATTACHMENT issues of right on original writ, without affidavit or bond. Personal property attached must be taken possession of by the officer or a copy of process and return thereon filed in town clerk's office and notice given to the defendant. It is a lien on personal property for thirty days after judgment, and real property for five months from such judgment.

GARNISHMENT is called TRUSTEE PROCESS. Action on contracts may be begun by trustee process, and any persons having goods, effects, or credits may be summoned and the property attached. Debts and legacies, absolutely due, may be so attached, and corporations summoned as trustees.

JUDGMENTS bear interest at six per cent., and are not liens on real property. (*See* ATTACHMENT.) There is no stay of execution.

EXEMPTIONS. Suitable apparel, bedding, tools, arms, and articles of household furniture necessary for the debtor and his family, one sewing-machine, one cow, the best swine, or meat from one swine, ten sheep, and one year's produce in wool, yarn, or cloth, forage for ten sheep and one cow for the winter, ten cords of firewood or five tons of coal, twenty bushels of potatoes, all growing crops, ten bushels of grain, one barrel of flour, three swarms of bees, and hives and produce in honey, two hundred pounds sugar, lettered gravestones, Bibles and other books used in the family, one pew in church, live poultry to the value of ten dollars, professional books and instruments of physician, professional books of an attorney or clergyman to the value of two hundred dollars, one yoke of oxen or steers, and forage for the winter, two horses kept and used for team work, and such as the debtor may select in lieu of one yoke of oxen or steers, but not exceeding two hundred dollars in value, and forage for the winter, arms and equipments used by any soldier in the service of the United States and kept as mementoes of service, one two-horse wagon or one ox cart, one sled or set of traverse sleds, two harnesses, two halters, two chains, one plow, and one ox yoke which, with the oxen, steers, or horses exempted, shall not exceed two hundred and fifty dollars in value, also mechanic's tool chest. A homestead of a housekeeper, or head of a family, to the value of five hundred dollars.

VIRGINIA.—ACTIONS. The common law forms except replevin remain, and actions are begun by original writ and summons. The assignee of a bond or note may sue in his own name.

ATTACHMENT may issue on affidavit that a defendant is — 1. A foreign corporation; 2. Is a non-resident of the State having estate or debts due him within the county where suit is brought; or 3. Is removing or about to remove from the State with intent to change domicile; or 4. Has removed or is about to remove property sued for, or his estate or a material part thereof so that execution on a judgment will be unavailing; or 5. Has converted or is about to convert his property or part thereof into money, securities, etc., with intent to hinder, delay, or defraud creditors; or 6. Has disposed of or is about to dispose of his estate or part thereof with like intent; or against a tenant for rent not due but payable within a year, on affidavit stating amount of rent reserved, when payable, and that tenant has within thirty days removed or is about to remove his effects from the premises, not leaving property liable to distress, sufficient to satisfy the rent to become payable; or against a vessel or the estate of the master or owner on a claim for materials or supplies, or for wharfage, pilotage, contract for transportation, or for injury to person or property by such vessel or any person in charge of her.

ARREST. There is no imprisonment for debt, but defendant may be arrested and held to answer on an affidavit showing the cause of action, the amount claimed, and that the defendant is about to quit the State.

GARNISHMENT is allowed on original attachment against any person having goods, effects, or credits of defendant, or who is indebted to him, and also on writ of *fieri facias*, on suggestion by judgment creditor that there is a lien by such writ on any third party as having property of the defendant.

JUDGMENT is a lien on real estate in the county where rendered from the first day of the term when rendered, and every other county from the time of docketing in such county, but as against a purchaser for value it must be duly docketed. The lien may be enforced in a court of equity. If it appears to the court that the rents and profits of the property subject to the lien will not satisfy the judgment in five years, it may order the property, or part of it, to be sold, and apply the proceeds to discharge the judgment. Judgments bear interest at six per cent.

STAY OF EXECUTION. There is no stay of execution except on appeal, and on small claims in the justice courts, in which on security being given execution may be stayed for a period not exceeding ninety days.

EXEMPTIONS. To a householder — 1. Family Bible. 2. Family pictures, school-books and library for family use, to the value of one hundred dollars. 3. Seat or pew in church. 4. Lot in a burying-ground. 5. Necessary wearing apparel, beds, bedding, and bedsteads, stoves and appendages put up, and necessary for family use, not exceeding three. 6. One cow and her calf, one horse, six chairs, one table, six knives, forks, and plates, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces wood or earthen ware, one loom and appurtenances, one safe or press, one spinning wheel, one pair of cards, one axe, two hoes, ten barrels corn, or in lieu thereof twenty-five bushels of rye or buckwheat, five bushels wheat, or one barrel of flour, two hundred pounds of pork or bacon, three hogs, forage or hay to the value of ten dollars, one cooking-stove and utensils, one sewing-machine, a mechanic's tools and utensils of trade to the value of one hundred dollars, the boat and tackle of an oysterman or fisherman not exceeding two hundred dollars; and to a laboring man being a householder, wages not exceeding fifty dollars per month. If the debtor is engaged in agriculture, one yoke of oxen, one pair of horses or mules, with the necessary gearing, one wagon or cart, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges. In addition to the above is allowed to a householder, widow, or minor children, a homestead of real estate or personal property to the value of two thousand dollars, except as to certain preferred claims.

WASHINGTON.—ACTIONS. All distinctions in the forms of actions are abolished. They must be prosecuted by the real party in interest, and are commenced by filing a petition and serving a summons.

ARREST. Defendant may be arrested by order of court in the following cases: in an action for the recovery of damages, on a cause of action not arising out of contract, when defendant is a non-resident or is about to remove from the State, or in an action for injury to person or character, or for injuring or wrongfully taking, detaining, or converting personal property; in an action for a fine or penalty or on a promise to marry, or for money received or property embezzled or fraudulently misapplied or converted to his own use by a public officer, attorney, an officer or agent of a corporation, a factor, agent, broker, or other person acting in a fiduciary capacity, or for misconduct or neglect in office or professional employment; in an action to recover the possession of personal property unjustly detained, when it has been concealed, removed, or disposed of so that it cannot be taken by the sheriff with intent that it shall not be so taken as to deprive plaintiff of benefit thereof; when defendant has been guilty of fraud in contracting the debt or incurring the obligation on which the suit is brought, or in concealing or disposing of property sued for; or has removed or disposed of his property, or is about to do so, with intent to defraud creditors; when the action is to prevent threatened injury to property in which plaintiff claims an interest; on final judgment or order of court when defendant having no property subject to execution has money which he ought to apply in payment but refuses, with intent to defraud plaintiff.

Plaintiff must furnish security for costs and damages.

ATTACHMENT may be had on filing affidavit of net amount due and that attachment is not sought, nor action brought to hinder, delay, or defraud creditors, and either that defendant is a foreign corporation, or a non-resident; or that he conceals himself, or has absented himself from his usual place of abode so that process cannot be served on him; or that he has removed or is about to remove property from the State to delay or defraud creditors; or that he has assigned, secreted, or disposed of property, or is about to do so to delay or defraud creditors; or that he is about to convert property into money to place it beyond reach of creditors; or that debt was fraudulently contracted; or that damages sued for are for injuries arising from some felony or for seduction.

Attachment may issue before debt is due, on affidavit that defendant is about to dispose of property to defraud creditors; or that he is about to remove from the State, and refuses to arrange for payment of debt, which contemplated removal was unknown to plaintiff when debt was contracted; or that he has disposed of property to defraud creditors; or that debt is for property obtained by false pretenses.

Plaintiff must give security for costs and damages.

GARNISHMENT. Debts, credits, and personal property in the hands of third persons may be attached. Wages to amount of one hundred dollars exempt.

JUDGMENT is a lien on land for five years from the date of judgment in the county where rendered, in other counties from date of filing transcript with county clerk.

STAY OF EXECUTION is allowed on judgments as follows: In the Supreme Court, on sums under five hundred dollars, thirty days; on sums between five hundred and fifteen hundred dollars, sixty days; on sums over fifteen hundred dollars, ninety days. In the Superior Court, on sums under three hundred dollars, two months; between three hundred and one thousand dollars, five months; over one thousand dollars, six months. Defendant must give bond.

EXEMPTIONS. To every person all wearing apparel, private libraries not exceeding five hundred dollars in value, family pictures and keepsakes, firearms, and a boat. To a householder being the head of a family, a homestead of the value of two thousand dollars, while occupied by such family; one bed and bedding, and one additional bed and bedding for every additional member of the family, and other household goods of the value of five hundred dollars; two cows with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for six months. To a farmer, one span of horses and harness, or two yokes of oxen, and one wagon with farming utensils not exceeding five hundred dollars in value. To a mechanic, the tools of his trade, and material to the value of five hundred dollars. To a physician, his library not exceeding five hundred dollars in value, horse and carriage, and instruments, and medicines to value of two hundred dollars. To attorneys and clergymen, and other professional men, their libraries not exceeding one thousand dollars in value and office furniture, stationery, and fuel, worth two hundred dollars. To persons engaged in lightering, one or more lighters or scows and a small boat, not exceeding the aggregate value of two hundred and fifty dollars. To a teamster, a span of horses or mules, harness, and one wagon, cart, or dray. To a person engaged in logging, three yokes of oxen and implements of the value of three hundred dollars. Proceeds of life insurance are also exempt.

WEST VIRGINIA.—ACTIONS. The old forms of actions and writs are preserved, and actions are begun in justices' courts by service of summons returnable in not less than five, nor more than thirty, days; in circuit courts, returnable within ninety days. The assignee of a bond, note, or writing not negotiable, may sue in his own name.

ATTACHMENT is allowed in actions for any claim or debt on contract, or for damages for any wrong, on an affidavit on behalf of the plaintiff, stating the nature and amount of the claim, and, 1. That defendant, or one of defendants, is a foreign corporation or non-resident. 2. That he has left, or is about to leave, the State with intent to defraud creditors. 3. That he so conceals himself that service cannot be had on him. 4. That he is removing, or is about to remove, his property from the State, so that an execution, when obtained, will be unavailing. 5. That he is converting, or is about to convert, his property into money or securities, with intent to defraud creditors. 6. That he has assigned or disposed of his property, or is about to do so, with intent to defraud creditors. 7. That he has property or rights of action which he conceals. 8. That he fraudulently contracted the debt or liability in question. Plaintiff must also give security for damages and costs.

ARREST. Defendant may be arrested and held to bail on an affidavit stating the nature and justice of the claim, and the amount, and, 1. That defendant has removed, or is about to remove, his property from the State, with intent to defraud creditors. 2. That he has converted, or is about to convert, his property into money with like intent. 3. Or has assigned, disposed of, or removed his property, or is about to do so, with like intent. 4. That he has property or rights in action which he fraudulently conceals. 5. That he fraudulently contracted the debt or liability. 6. That he is about to leave the State permanently, without having paid plaintiff's demand.

Plaintiff must also give security for damages and costs.

GARNISHMENT. In the writ of attachment, the plaintiff may designate any third parties as having effects of the defendant in their hands, and such parties may be summoned as garnishees.

JUDGMENTS bear interest at six per cent.; are liens on real estate in every county from the date of docketing in the county where the land is, and the lien continues for ten years, but the judgment must be docketed within sixty days from the date of rendition, or before any deed from the debtor to a third party is delivered for record. A writ of *fieri facias* is a lien on personal property from the time of delivery to the sheriff.

STAY LAW. In justices' courts, by giving bond with surety, stay of execution is allowed as follows: Where the judgment, exclusive of interest and costs, does not exceed fifty dollars, two months; between fifty and one hundred dollars, five months; over one hundred dollars, six months.

EXEMPTIONS. Any husband or parent, or the widow, or infant children of deceased parents may set apart a homestead to the value of one thousand dollars, as against debts accrued after date of filing declaration of homestead, and personal property to the value of two hundred dollars. The working tools of a mechanic, artisan, or laborer, to the value of fifty dollars, provided the whole amount of exemptions does not exceed two hundred dollars.

WISCONSIN.—ACTIONS. All distinctions have been abolished, and there is now but one form, which must be prosecuted in the name of the real party in interest, except in case of executors, administrators, and trustees, and which is begun by the service of a summons on the defendant.

ARREST. Defendant may be arrested, 1. In an action to recover damages not on contract, where the defendant is a non-resident, or is about to remove from the State, or where the action is for injury to the person or character, or for injury to, or wrongful taking, detaining, or converting property, or in an action to recover damages for property taken under false pretences. 2. In an action for a fine or penalty, or for money received, or property embezzled, or fraudulently misapplied by a public officer or attorney, or an officer of a corporation as such, or factor, agent, or broker, or for misconduct or neglect in official or professional employment. 3. In an action to recover property unjustly detained, where it is so concealed that the sheriff cannot find the same, but no female to be arrested except for wilful injury to person, character or property.

An affidavit must be made on the part of the plaintiff, stating the cause of action, and one of the above causes, and security must be given to defendant.

ATTACHMENT is allowed on an affidavit that the defendant is indebted to plaintiff, and stating the amount, which must exceed fifty dollars, that it is due on contract or judgment, and, 1. That defendant has absconded, or is about to abscond, or is concealed to the injury of his creditors, or to avoid service of summons. 2. That defendant has assigned, disposed, or concealed his property, or is about to do so, with intent to defraud creditors. 3. That the defendant has removed, or is about to remove, his property from the State, with intent to defraud creditors. 4. That the debt was fraudulently contracted. 5. That he is a non-resident. 6. Or a foreign corporation, or if incorporated in the State, that all the proper officers on whom to make service are non-residents or cannot be found. Or the affidavit shall state that a cause of action sounding in tort exists for an amount exceeding fifty dollars, and that the defendant is not a resident of the State, or that his residence is unknown and cannot be ascertained, or that defendant is a foreign corporation. Attachment may issue on a demand not yet due in any case mentioned in the first four subdivisions. Plaintiff must also give bond.

GARNISHMENT is allowed on an affidavit on behalf of the creditor, that he believes that any third person (naming him) has property, effects, or credits of defendant, or is indebted to him, and that defendant has not property sufficient to satisfy his demand; also on execution, on a similar affidavit.

JUDGMENT is a lien on real estate in the county where rendered from the date of docketing, and in other counties from the time of filing a transcript, and the lien continues for ten years. It bears interest at six per cent., except judgment for foreclosure which is at rate specified in mortgage. not exceeding six per cent.

STAY LAWS. In justices' courts, on giving bond with surety within five days after judgment was rendered, stay of execution is allowed as follows: On sums not exceeding ten dollars, exclusive of costs, one month; between ten and thirty dollars, two months; between thirty and fifty dollars, three months; over fifty dollars, four months.

Exemptions. A homestead not exceeding forty acres, used for agriculture, and a residence, and not included in a town plat, or a city or village, or instead, one-quarter of an acre in a recorded town plat, city, or village occupied and not exceeding five thousand dollars in value. Also, 1. Family Bible. 2. Family pictures or school books. 3. Private library. 4. Seat or pew in church. 5. Right of burial. 6. Wearing apparel, beds, bedsteads, and bedding kept and used in the family, stoves and appurtenances put up and used, cooking utensils and household furniture to the value of two hundred dollars, one gun or other firearm to the value of fifty dollars. 7. Two cows, ten swine, one yoke of oxen, one horse or mule, or, in lieu thereof, a span of horses or mules, ten sheep and the wool therefrom, necessary food for exempt stock for one year, provided or growing, or both, one wagon, cart, or dray, one sleigh, one plow, one drag, and other farm utensils including tackle for the teams, to the value of two hundred dollars. 8. Provisions and fuel for the family for one year. 9. Tools and implements, or stock in trade of a mechanic or miner, trader, or other person, used and kept for carrying on business, not exceeding two hundred dollars in value. 10. Money arising from insurance of exempt property destroyed by fire. 11. Interest in patents held by the inventor. 12. Sewing-machine. 13. Sword, plate, books, or articles presented by Congress, or legislature of a State. 14. Printing materials and presses to the value of fifteen hundred dollars, but only four hundred dollars is exempt from payment to employes. 15. Earnings of a married person necessary for family support, for three months previous to issuing process, not exceeding sixty dollars per month. 16. Horse, arms, and equipments of a militiaman. 17. Books, maps, and other papers kept or used for the purpose of making abstracts of title to land. The proceeds of policy of insurance on the life of a minor, payable to parents, are exempt as against their creditors, but not against creditors of the minor.

WYOMING. — Actions. There is but one form of action at law, which is commenced by filing a petition on which a summons issues.

Arrest. An order of arrest may be obtained on plaintiff's giving security and filing affidavit setting forth the nature and amount of his claim, that it is just, and establishing one or more of the following particulars: 1. That defendant has removed or begun to remove property out of jurisdiction of court with intent to defraud creditors. 2. That he has begun to convert property into money to place it beyond reach of creditors. 3. That he has property or rights of action fraudulently concealed. 4. That he has assigned, removed, or disposed of property to defraud creditors. 5. That he fraudulently contracted debt on which suit is brought. 6. That the money or thing for which recovery is sought was lost by gambling or by bet or wager.

No female can be arrested except for willful injury to person, character, or property.

Attachments are granted in a civil action for the recovery of money, on plaintiff's giving security and filing an affidavit stating the nature and amount of his claim, that it is just, and the existence of one of the following grounds: 1. That defendant is a foreign corporation or non-resident. 2. Has absconded with intent to defraud creditors. 3. Has left county of residence to avoid service of summons. 4. Conceals himself so that summons cannot be served on him. 5. Is about to remove his property out of the jurisdiction of the court, with intent to defraud creditors. 6. Is about to convert his property into money to place it beyond reach of creditors. 7. Has property or rights of action concealed. 8. Has assigned, removed, or disposed of his property, or is about to do so, to defraud creditors. 9. Fraudulently contracted debt sued on.

Attachment may issue on claims not yet due, on affidavit showing existence of any of the above grounds from second to ninth inclusive.

GARNISHMENT. When plaintiff makes oath in writing that he believes that any person or corporation named has property of the defendant in his possession, describing the same, and the officer cannot get possession of such property, such person or persons may be summoned as garnishee.

JUDGMENT is a lien on real estate in the county where entered, from the first day of the term at which judgment is entered, except judgments by confession and those rendered at the term action is commenced, which are binding only from the day they are rendered. Unless execution is taken out and levied within one year, the judgment ceases to be a lien as against any other judgment creditor, and unless the execution is taken out within five years, the judgment becomes dormant and the lien expires.

STAY OF EXECUTION is allowed in justices' courts and District Courts on filing bond, for six months.

EXEMPTIONS. Every householder, the head of a family, is entitled to a homestead not exceeding in value fifteen hundred dollars, consisting of a house or lot in a town or city, or a farm of not more than one hundred and sixty acres of land. The wearing apparel of every person is exempt, and the following property owned by any person the head of a family, viz: the family Bible, pictures, and school-books; rights of burial; furniture, bedding, provisions, and such other articles as the debtor may select, not to exceed in all the value of five hundred dollars. The tools, team, and implements, or stock in trade, of a mechanic, miner, or other person, used or kept for the purpose of carrying on his trade or business, not exceeding three hundred dollars; the library, instruments, or implements of any professional man, not exceeding three hundred dollars; half the earnings of debtor within sixty days before levy not exceeding fifty dollars, when necessary for support of family.

CHAPTER XXXVI.

THE LIENS OF MECHANICS AND MATERIAL MEN FOR THEIR WAGES AND MATERIALS.

In nearly all our States there are now some provisions for securing to mechanics, and to persons supplying materials (who are called "material men"), their wages and pay for their materials, by means of *liens*, as they are called in law. A *lien* is a *hold* upon or a valid claim against property. This means that every mechanic employed upon a house, and, in most of the States, upon a vessel, and in some upon any property whatever, as a railroad or canal, either in the construction or repair of it, has a *lien* upon the property on which he has labored or for which he has supplied materials, for the amount of his wages and the price of his materials. This lien or claim he has for a certain time; and during that time he may either sue for his wages, and make an attachment of the property, or, in some States, file a petition with the proper court; and in either may have the property sold to pay his wages, unless the owner redeems it.

The reason of these precautions is obvious enough. The purpose of the law is to assist and protect the mechanic, or material man, but not to enable him to commit a fraud or do an injury to his neighbors. And it would be an injury to a man to let him buy a house and pay full price for it, and then tell him that the mechanics who built it had a *lien* (which is much the same in effect as a mortgage) upon the house, without his knowing anything about it. And it would be an injury to an owner, who had contracted with the master-workman to repair or change his house at great expense, to settle with this master workman in due time, and pay him the full amount of his bill, without any notice to the owner that he was under an obligation to pay again for all the labor spent upon his house, or let the house go on execution.

Of all the laws for the recovery of debts, and the enforce ment of the liens of mechanics referred to in this and the preceding chapter, the provisions *now in force* are quite recent. Only of late years has imprisonment for debt been greatly mitigated or removed, and the trustee or garnishee process made what it now is, exceedingly convenient and useful. The homestead law and the lien law, though now so widely spread, are a modern invention, or, at least, of modern introduction. One effect of this recent origin is, that important practical questions still exist as to their construction, application, and effect, which only time can solve.

I give, annexed to this chapter, an abstract of the Laws of all the States relating to Mechanic Liens.

In this chapter nothing more has been attempted than to indicate distinctly to the mechanic what rights he may possess and what securities he may hold, and how he may lose the rights and securities he possesses, and to the owner or buyer what liabilities he may incur, unless the one and the other take the proper course which the law has provided for their safety.

The forms to be used under the lien laws are not usually prescribed by statute. Those given below are in use in some of our principal cities; and the same, in substance, would be suitable anywhere, with such modifications as may be necessary to adapt them to the provisions of the law of the State where they are to be used.

(263.)

A Notice under Mechanic's Lien Law.

(*To be filed with the Clerk of the County or other officer designated by statute.*)

To Esquire,
Clerk of the City and County of

SIR,

Please to take Notice, That I, residing at No. Street, in have a claim against amounting to the sum of due to me, and that the claim is made for and on account of (*here state the work or materials*) and that such work was done in pursuance of (*here describe the contract*) which building is owned by situated in the ward, of the city of on the side of Street, and is known as No. The following is a diagram of said premises (*or, the said premises being described as follows*).

And that I have and claim a lien upon said house or building, and the appurtenances and lot on which the same shall stand, pursuant to the provisions of an act of the Legislature of the State of to secure the payment of mechanics, laborers, and persons furnishing materials towards the erection, altering, or repairing of buildings.

Dated, this day of **19**

(*Signature.*)

COUNTY OF } ss.
CITY OF }

(*The name of the party claiming the lien*) being duly sworn, says, that he is the claimant mentioned in the foregoing notice of lien, that he has read the said notice and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this day of **19**

(*Signature*).

(264.)

A Bill of Particulars of Mechanic's Claim.

(*To be served on owner, and in some States to be recorded with the Notice.*)

A Bill of Particulars Of the amount claimed to be due from for and on account of (*work or materials*) and that such work was done (*or materials furnished*) in pursuance of (*state the contract or order*) which building is owned by situated in the ward of the city of on the side of Street, and is known as No. of said street.

(*Signature of Claimant.*)

To (*name of owner.*)

(*Date.*)

(265.)

A Release and Discharge of a Mechanic's Lien.

I do Hereby Certify, That a certain mechanic's lien, filed in the office of the clerk of the county of the day of one thousand nine hundred and at o'clock in the noon, in favor of claimant against the building and lot, situate side of street, and known as No. in said street, whereof is owner, and is contractor, is discharged.

(*Signature.*)

ss. On the day of one thousand eight hundred and before me came who is known to me to be the individual described in, and who executed the above certificate, and acknowledged that he executed the same.

(266.)

Release and Discharge of a Mechanics' Lien—another Form.

Whereas, We, the subscribers, have erected and furnished materials for erecting on lot or piece of ground situate And have agreed to release all liens which we, or any or either of us have, or might have, on the said by reason of materials furnished, or work performed, for erecting the same. Now these presents witness, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us at or before the sealing and delivery hereof by the said well and truly paid, the receipt whereof we do hereby acknowledge, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim unto the said and to his heirs and assigns, all and all manner of liens, claims, and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the said and premises, for work done, or for materials furnished, for erecting and constructing the said building, or otherwise howsoever. So that he, the said and his heirs and assigns, shall and may have, hold, and enjoy, the said and premises, freed and discharged from all liens, claims, and demands whatsoever, which we, or any or either of us now have, or might or could have, on or against the same, if these presents had not been made.

In Witness Whereof, We have hereunto set our hands and seals the day of the date written opposite our respective signatures.

(Date.) *(Witnesses at signing.)* *(Signatures of Claimants.)*

ABSTRACT OF THE LAWS OF ALL THE STATES RELATING TO MECHANICS' LIENS.

ALABAMA.— Every mechanic or other person who performs any work or labor, or furnishes any materials or fixtures, erection, or improvement on land, or does any repairing on the same by virtue of a contract, has a lien on such building or improvement, and upon the land on which it is situated, to the extent of one acre. The original contractor within six months, and any laborer within thirty days, and any other person within four months, must file with the judge of probate a verified statement of the account and description of the property, and name of owner, and action must be brought to enforce the lien within six months from the maturity of the debt. Mechanics also have a lien on articles made or repaired by them.

ALASKA.— Persons performing labor or furnishing materials at the instance of an owner, or his agent, upon any construction work, have a lien thereon, and upon the land on which it is located, for such labor or materials, but if the one causing the work to be done or materials furnished owner less than a fee simple, then only such interest as he owns is subjected to a lien. Original contractors must within sixty days, and others within thirty days, of the completion of the work file a statement of their claims with the recorder of the precinct, in order to perfect their liens. Suit must be brought within six months, or if credit is given within six months of the expiration of the credit, but no agreement to give credit can preserve a lien longer than one year from completion of work. One performing work on an article has a lien thereon and may retain possession thereof until paid, and after thirty days may sell it at auction, first giving three weeks' notice of the sale.

An attorney has a lien on the papers and money of his client in his possession.

ARIZONA.—Every person performing labor upon or furnishing materials for the construction, alteration, or repair of any building or other structure or improvement, may have a lien thereon, and on the land necessary for the convenient use and occupation of the same. The claimant must, within ninety days after the completion of the labor or furnishing materials, file in the office of the county recorder where the property is situated the contract, or, if it be verbal, a copy under oath of the bill of particulars, and furnish a duplicate to the debtor; a sub-contractor shall, within sixty days from completion of the work, deliver to the owner if he can be found in the county, otherwise to the county recorder, an attested account of the labor and materials furnished. Liens are to be foreclosed by suit within six months.

ARKANSAS.— A mechanic or other person performing any work or labor, or furnishing any material or fixture, erection, or improvement on land or doing any repairing on the same by virtue of a contract, has a lien on such building or improvement, and upon the land upon which it is situated not exceeding one acre. He must file with the clerk of the circuit court of the county where the land is, within ninety days after ceasing to labor or to furnish materials, a just and true account of the claim, and description of the property, verified by affidavit, and suit must be begun within ninety days thereafter. Parties other than original contractor must give ten days' notice before filing claim. Laborers have eight months in which to bring suit to enforce their lien.

CALIFORNIA.— Every person performing labor upon, or furnishing materials to be used in the construction, repairing or altering any structure, has a lien on the same for his services. In case the work is done under an entire contract, the owner is not answerable under the liens for an amount greater than he owes under such contract; but if the contract exceeds one thousand dollars, it must be in writing and recorded with the county recorder or the liens will subsist for all labor done or materials furnished. Twenty-five per cent. of the contract price must be held back for thirty-five days after completion of work. Contractors must file their claims for liens with county recorder within sixty days, and others within thirty days, of the completion of the work. Suit must be brought in the Superior Court within ninety days of filing of lien. Liens exist on personal property in possession for service rendered such property.

COLORADO.—Any person performing work, or furnishing materials on any building or other structure, or on a mine, at the instance of the owner or his agent, has a lien on the same, together with so much of the land as is necessary to the convenient use and occupation of such building or structure, and he must, within three months after the completion of the work, if an original contractor, two months if a material man, or one month if a laborer, file a sworn statement in the county recorder's office containing a notice that he claims such lien, the amount due, name of the owner and employer, the terms and conditions of the contract, and a description of the property. Action to enforce the lien must be brought within six months after filing statement. Liens extend only to the contract price, but if the contract exceeds five hundred dollars and is not in writing and filed for record, liens subsist for all labor done or materials furnished. Fifteen per cent. of contract price shall be payable thirty-five days after completion of the work. Liens exist on personal property for work done the same.

CONNECTICUT.—A lien is allowed on every building or railroad in the construction or repairing of which any person has a claim for labor or materials exceeding ten dollars. The lien is dissolved unless, within sixty days after ceasing to labor or furnish materials, such person files with the clerk of the town where the building is, or, in the case of a railroad, with the Secretary of State, a description of the premises, the amount of the lien, and the date of the commencement of the claim, the same being subscribed and sworn to. Foreclosure proceedings must be commenced within two years.

DELAWARE. —A lien is allowed to any person furnishing materials or labor, or both, on any building to the amount of twenty-five dollars. The original contractor must file a statement not sooner than ninety or later than one hundred and twenty days after the completion of the building — other persons within ninety days after ceasing to labor or furnish materials. Claims for less than one hundred dollars must be filed in not less than twenty nor more than thirty days. The statement must contain the names of the claimant, owner, and contractor, the amount claimed, and a bill of particulars of the work done, the time when the work was done, the locality of the building, and description thereof.

DISTRICT OF COLUMBIA.—Every contractor, material man, journeyman, or laborer, has a lien on building and land for work, materials furnished, or machinery or other thing placed in the building as a fixture, but not exceeding the entire contract price. Notice must be filed in the clerk's office of the supreme court during the construction or within three months after completion of buildings or repairs, of the intention to claim a lien, and the amount and the lien must be enforced by proceedings in equity within one year after filing notice, or within six months after completion of building. Mechanics have liens on articles of personal property for labor and materials.

FLORIDA. — Persons performing or furnishing labor or materials in the construction or repair of any building or other structure, or of additions to or upon any fixtures therein, or in the construction, repair, or operation of any railroad, canal, telegraph, or telephone line, wharf, mill, distillery, or other manufactory have a lien upon the same and the franchise, machinery, and equipments connected therewith, and upon the land on which they stand. Provision is made that persons furnishing labor or materials under a subcontract may secure liens. Persons performing or furnishing labor on any farm, orchard, garden, etc., have also a lien thereon. One furnishing labor or materials for a sidewalk at the procurement of an adjacent owner, may have lien on the adjacent land. As against every one but the owner and persons in privity with him, notice of lien under oath must be filed within three months in office of circuit court of county where land lies. Suit must be brought within twelve months. Liens on personal property are also given by statute in many cases.

GEORGIA. — All mechanics and persons doing any work on a building, or furnishing any materials or machinery, have a lien on the same; but there must be a substantial compliance with the contract, and the claim must be recorded within three months after the work is done or materials or machinery furnished, in the clerk's office of the county where the property is situated, containing a description of the property and of the demand. Subcontractor's lien attaches only for amount due from contractor at date of notice. Mechanics and laborers also have a lien on personal property for work done in manufacturing or repairing the same, which is enforced by retaining the property, but is lost on delivering it up unless lien is recorded in clerk's office in ten days. Action to enforce a lien must be begun within twelve months after the claim is due.

IDAHO. — Liens are given for labor or materials furnished and used in the construction, alteration, or repair of any building, wharf, bridge, ditch, flume, tunnel, fence, machinery, road, aqueduct to create hydraulic power, or any other structure, or for labor on a mining claim.

Every original contractor within ninety days after the completion of his contract, and every other person, except labor or material men, claiming a lien within sixty days after the completion of the building or the repairs on the same, or after ceasing to furnish labor or materials, must file with the recorder of the county a claim containing a statement under oath of his demand, name of owner of property, if known, of his employer or person to whom materials were furnished, statement of terms and conditions of contract and description of property. Suit to foreclose lien must be commenced within ninety days after filing. A labor or material man has only thirty days after finishing his labor or furnishing materials in which to file such notice. A lien for labor on farm may be had by filing claim within thirty days after ceasing to labor.

ILLINOIS. — All persons performing labor or furnishing materials have a lien on the real estate upon which the work is done. Before an owner makes any payment under an entire contract, he must obtain from the contractor a list of all parties performing labor or furnishing materials under such contract. As against third parties, a contractor's lien will not subsist unless suit is brought within four months after completion of work, but against the owner suit may be brought at any time within two years.

A sub-contractor must give written notice of his claim to the owner within sixty days after completion of his work, and thereupon the owner must retain from the contractor an amount sufficient to cover such claim. A sub-contractor must begin suit within four months to enforce his lien.

INDIANA. — Mechanics and all other persons performing labor or furnishing materials or machinery on any structure or building whatsoever, have a lien on the same. To secure the lien a notice of the claim must be filed in the record office of the county where the building is, within sixty days after completion of the building or repairs. Suit may be begun to enforce the same within one year. A mechanic or tradesman has a lien on any personal property for work done. Mechanics and laborers may have a lien for labor and materials furnished to a railroad on all the property and franchises of the road.

IOWA. — Persons doing work or furnishing materials on any building or improvement have a lien on the buildings and land. There must be filed in clerk's office of the district court of the county, within ninety days after the work is done or materials furnished, by principal contractors, or within thirty days by sub-contractors, a statement under oath of the demand due, the time when labor was performed or materials furnished, and description of property charged.

To prevent payment to principal contractor, notice of filing sub-contractor's lien must be given to owner within thirty days.

KANSAS.— Any mechanic or other person who shall furnish, under contract, any labor or materials for erecting, altering, or repairing any building or appurtenance, or any machinery or fixtures in the same, or plant or grow any trees, vines, hedges, etc., or shall build a stone or other fence, shall have a lien on the buildings, land and appurtenances. Sub-contractors must file a statement of their account with the clerk of the District Court for the county within sixty days after the completion of the buildings, etc., or the furnishing the labor or materials, and serve notice of filing on owner of the land. Contractors must file such an account within four months, and all actions to enforce liens must be begun within one year after filing lien.

KENTUCKY.—Any person who performs any labor or furnishes any material, or fixtures, or machinery in the erection, alteration, or repair of any structure, or who makes any improvement in any manner on real estate, by a contract with or written consent of the owner, has a lien on the building and land for twelve months from the completion of the work, within which time suit must be brought to enforce the same. Within six months after ceasing to labor or furnish materials, he must file in the office of the county clerk of the county where the building is, a statement of amount due, description of property, and name of the owner, and also whether the work was done or the materials furnished by contract with the owner or with a contractor or sub-contractor.

Sub-contractors and laborers may acquire a lien to the extent of balance due the principal contractor by giving notice to employer that they claim a lien, and filing a statement as above.

LOUISIANA.—Liens in this State are known as privileges. Architects, contractors, and all persons who are employed in constructing or repairing any building, and all persons who have supplied the owner, agent or sub-contractor with materials to be used on any building, have a lien and privilege on the buildings and lot of land not exceeding one acre. The privilege must be recorded with the register of privileges in the parish where the property is, together with the act containing the bargain made, or a statement of the account. Acts of 1906 extend lien to threshermen who thresh crops.

MAINE.—Any person performing or furnishing labor or materials in erecting, altering, or repairing any house, building, or appurtenance by virtue of a contract with, or by consent of the owner, has a lien on the building and land on which it stands. If the labor or materials are not furnished by contract with the owner, he may prevent the lien for such labor or materials not yet furnished from attaching, by giving written notice that he will not be responsible for the same; and the lien is dissolved, unless, within sixty days after ceasing to labor, or to furnish materials, the claimant shall file, in the office of the town clerk where the building is, a true statement of the account, a description of the property, and the owner's name. Suit must be begun in all cases within ninety days after the last labor was performed or materials furnished. Many other liens are provided for which consultations should be had with the statutes.

MARYLAND.—Every building, machine, wharf, or bridge erected, or repaired, or improved to the extent of one-fourth of its value, is subject to lien for the payment of all debts contracted, or work done, or except in the city of Baltimore for materials furnished for or about the same. If the contract be made with anyone but the owner, the claimant must, within sixty days after furnishing the work or materials, give notice in writing to the owner. Claimant must within six months file a statement of his demand in the office of the clerk of the Circuit Court for the county where the property is, or in Baltimore in the Superior Court. The lien continues for five years. Similar liens are given for labor or materials furnished for building or equipping vessels, and are in force for two years.

MASSACHUSETTS.—Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the erection, alteration, or repair of any building or structure upon real estate, by virtue of an agreement with, or by consent of the owner thereof, or any person having authority from the owner, has a lien on the property and land for his charges. There can be no lien for materials furnished to a person other than the owner, unless notice of intention to claim lien is given to the owner before furnishing the materials, and the owner may prevent the lien in such case from attaching by giving written notice that he will not be responsible. Any one having an interest in the property claimed may release the same by giving a sufficient bond. Liens are dissolved, unless the claimant, within thirty days after ceasing to work or furnish materials files in the registry of deeds for the county or district where the property is situated a true statement of the account, under oath, together with a description of the property and the owner's name; and suit to enforce the lien must be begun within ninety days after ceasing to work or furnish materials. Public officers contracting for construction or repair work on public buildings or other public works, are now required to obtain bonds to secure payment by contractors and sub-contractors for labor and materials furnished for such work; but claimant must file his claim with such officers within sixty days of completion of the work.

MICHIGAN.—Every person who, under any express or implied contract with the owner or lessee of any interest in real estate, or with a contractor, performs labor or furnishes materials for building, altering, repairing, or ornamenting any building, machinery, wharf, or other structure, has a lien thereon, and on the interest of the owner or lessee of the land on which improvements were made, not, however, to an amount exceeding the original contract price, nor unless notice is given that the lien will be claimed.

Any person furnishing materials or performing labor for contractor must within thirty days after commencing to labor or furnish materials, furnish statement to owner or lessee.

Payments to contractor within sixty days after notice of lien are at owner's risk.

If the estate is a homestead the contract must be signed by the owner and his wife. A notice, signed and verified, setting forth the time of commencing to furnish the labor, etc., the amount due or to become due, and a description of the property, must be filed in the registry of deeds within sixty days after furnishing last of labor or materials and within ten days after filing must be served on the owner or lessee, or in his absence on agent in charge, and, in absence of both, by posting on the premises. The lien must be enforced by suit in chancery within one year after filing notice, or finishing last of labor, etc.

MINNESOTA.—Any person performing labor or furnishing material for construction or repair of any water-craft, building, wharf, fence, structure, railway, or telegraph line, etc., by virtue of a contract with the owner, agent, contractor or sub-contractor, may have a lien thereon and on the land not exceeding forty acres without a city or village or one acre within such city or village. Labor or material furnished with knowledge of owner held to be at his instance unless he gives notice to the contrary within five days. Claimant must file verified statement in writing of amount due, that same is for labor or materials furnished and date of first and last items of account, description of property to be charged, and owner's name and notice of intention to claim lien, within ninety days from last item in office of register of deeds of county where premises are situated — or in case of water-craft, railroad, telegraph or telephone line in office of Secretary of State. Lien must be enforced by suit within one year from date of last item.

MISSISSIPPI.—Every building, bridge, machinery, or fixtures for manufacturing purposes, railroad, or water-craft, and every paling or enclosure is liable for the payment of any debt contracted and owing for labor performed or materials furnished about the erection, alteration, or repair of the same, and the debt is a lien on the building or structure and the land on which it is, not to exceed one acre if in the country. The lien takes effect from the time of filing the contract in the office of the chancery clerk for the county where the land is, or from the commencement of suit to enforce it, and such suit must be begun within six months after the money claimed is due and payable. Sub-contractors, or employes, or furnishing men of a contractor, are not entitled to a lien. Land of third person bound only when he gives written consent to improvement.

MISSOURI.—Every person performing any work or furnishing any materials, fixtures, engines, boilers, or machinery for any building, erection, or improvement on land, or for repairing the same, has a lien on the building and land belonging to the owner on which the building is, to the extent of one acre, or if in a city, town, or village, on the lot and building. Every original contractor within six months, every journeyman and day-laborer within sixty days, and every other person within four months, must file with the clerk of the circuit court for the county where the property is a true account of his demand, a description of the property, and the owner's name, and action to enforce the lien must be begun within ninety days after filing such account. Sub-contractor or laborer must give owner ten days' notice before filing lien.

MONTANA.—Every person performing labor or furnishing materials, machinery, or fixtures for any building, structure, bridge, flume, canal, ditch, mining claim, quartz lode, city or town lot, ranch, railroad, telegraph, telephone, electric light line, gas or water-works or plant, or other improvements, may have a lien thereon, by filing within ninety days with the clerk of county where property is situated, a statement under oath of amount due, and description of property. Such liens take precedence of any prior lien, encumbrance, or mortgage. Suit must be commenced within one year.

NEBRASKA.—All persons performing labor or furnishing materials, or machinery for erecting, repairing, equipping, or removing any building or appurtenance have a lien to secure payment for the same, on the building or appurtenance and lot on which it stands. The claimant must make an account in writing, under oath, and within four months from the time of doing the work or furnishing the materials must file the same in the office of the clerk of the county where the work was done, and the lien continues for two years after filing claim. Sub-contractor must file claim within sixty days.

NEVADA.—Every person performing labor upon, or furnishing materials of the value of five dollars in constructing or repairing any building or superstructure, or performing labor on any railroad, tramway, toll-road, canal, water ditch, flume, aqueduct, reservoir, mine, or tunnel, or in the improvement of any building lot in a city or town, has a lien on the same for his work, labor, or materials, if done at the instance of the owner or his agent. The land occupied by the building, structure, or improvement is subject to the lien. Original contractors within sixty days, and all other persons within fifty days, after last work done or materials furnished, must file in the record office for the county where the land is a statement of the demand, the owner's name, and description of the property. Suit must be begun within six months after filing the claim.

NEW HAMPSHIRE.—Any person who, by himself or others, performs labor or furnishes materials to the value of fifteen dollars or more, for erecting, altering, or repairing a house, or other building or appurtenance, by virtue of a contract with the owner, may have a lien on the same, such lien to be secured by attachment, and to continue ninety days. A sub-contractor may have a similar lien by giving notice in writing to the owner or person having charge of the property of his intention to claim a lien, and furnishing to the owner once in thirty days an account of labor performed or materials furnished. Lumberers and railroad sub-contractors have a like lien, on giving similar notice and account.

NEW JERSEY.—Every building constructed, erected, or repaired, and machinery or fixtures put into any building, are liable for the payment of all debts contracted and owing to any person for labor performed or materials furnished for the erection or repair of such building, machinery, or fixtures. But if the work was done by contract, the building is liable to the contractor alone, provided the contract, or a copy, is filed in the county clerk's office before any work was done or materials furnished. The claimant must, within four months after performing the labor or furnishing the materials, file in the office of the county clerk a statement containing a description of the building, the owner's name, and the name of the person contracting the debt, the time of beginning the work, and a bill of particulars, and also issue a summons in a suit to enforce lien, and suit must be diligently prosecuted within one year. If laborer or material man is not paid by contractor he may notify owner, who may pay his claim, or within five days notify him to establish his claim by judgment.

NEW MEXICO.—Any person furnishing labor or materials for the erection or repair of a building has a lien thereon and on the land on which it stands. Original contractor must file in office of county clerk a statement of account, under oath, and description of property, within ninety days after completion of contract. Sub-contractors must file similar statement within sixty days after work done or material furnished. Suit must be brought within one year from time of filing claim of lien.

NEW YORK.—Any person who, with the consent of the owner, or his agent, or any contractor or sub-contractor, performs services or furnishes materials for the improvement of real property may have a lien on the premises to secure the payment of his claims. A notice of this lien, including name and residence of lienor, name of owner of property, name of employer, statement of contract including agreed price or value, amount unpaid, time of first and last items of labor and materials, and description of property, verified by the claimant or his agent, must be filed in the county clerk's office within ninety days after ceasing to work or furnish materials, and suit begun within a year after such time. By act of 1906 provision is made for the enforcement of liens for labor or materials against the state or municipal corporations.

NORTH CAROLINA.—Every building built, rebuilt, repaired, or improved, together with the lot on which the building is, and every lot, farm, or vessel, is subject to a lien for the payment of all debts contracted for work or materials furnished about the same. Notice of the lien must be filed in the office of the clerk of the superior court of the county within twelve months after the labor is completed or materials furnished, specifying the labor or materials furnished and the time. Suit must be brought within six months after filing lien. Sub-contractors, laborers, and material-men can take a lien by notifying owner of property before he has settled with the contractor, and filing notice as above. Agricultural laborers and persons engaged in loading vessels also have liens. Mechanics and artisans have a lien on personal property made or repaired by them, and they may retain possession of the property. If their charges are not paid within thirty days if the value of the article does not exceed fifty dollars, or ninety days if the value is over fifty dollars, they may proceed to sell the property at auction, after giving two weeks' notice. See Laws of 1903, Chapter 478.

NORTH DAKOTA.—Every person performing labor or furnishing materials, machinery, or fixtures for any building, erection, or other improvement upon land, by virtue of any contract with the owner, his agent, trustee, contractor, or sub-contractor, may have a lien on such building, erection, or improvement, and the land on which it is situated. When materials, etc., are furnished to contractor or sub-contractor notice must be given to owner of land. Notice of lien must be filed with clerk of district court of the county within ninety days after labor is performed or materials furnished. If the owner so demands, suit to enforce lien must be brought within thirty days after such demand.

OHIO.— Any person performing labor or furnishing machinery or material for constructing or repairing any vessel, or any building, bridge, or other structure, or digging or drilling any gas, oil or other well, or mining coal, by virtue of contract with the owner or agent, may have a lien on structure and interest of owner in land. He must file an itemized and sworn account of amount and value of work or materials, with credits if any, copy of contract if in writing, and description of land, in recorder's office of the county within four months after doing the work, etc., and within thirty days thereafter notify the owner of his claim, failure to do which is fatal.

Action to enforce lien must be brought within six years.

Persons performing common or mechanical labor, or furnishing supplies to any railroad, turnpike, canal, or public structure, have a first lien thereon. A sworn statement must be filed within thirty days with the recorder of counties where work was done or materials furnished.

Claims for manual labor have prior lien on real property of employer as against attachment, mortgages, and assignments in certain cases, provided an itemized statement of claim is filed with the recorder.

OKLAHOMA.— Any person performing labor or furnishing material in building, altering, or repairing building or structure may have a lien on structure and land. If the work be done or material furnished under contract with the owner of the land, or trustee, agent, husband, or wife of owner, statement under oath must be filed with clerk of district court within four months, setting forth amount claimed, the items, names of owner, contractor, and claimant, and description of property. If work be done or materials furnished under sub-contract, statement must be filed within sixty days and notice served on owner. Suit must be brought within one year after filing lien.

OREGON.— Any person who, by virtue of a contract with the owner or his agent, performs any labor, or furnishes any materials, engines, or machinery for the construction or repair of any building or structure, has a lien on the building and lot on which it stands for his pay. An original contractor must file in the office of the county clerk, within sixty days after the completion of the building or repairs, a notice of his intention to claim a lien, specifying the amount due and the property. A laborer or sub-contractor must file notice within thirty days. The lien will not be binding for more than six months after such filing, unless suit is brought. All persons furnishing fuel or materials to a contractor with a railroad corporation may secure a lien on the property of the latter but not to an amount exceeding that due by the corporation to the contractor. Mechanics and artisans have a lien on personal property made or repaired by them, and if their charges are not paid in three months, they may sell the property.

PENNSYLVANIA.— Under Act of 1901 buildings and land are subject to liens for labor and materials, exceptions, however, existing in certain cases, i. e., where furnished for public purposes, or where the land is held by trustee of lunatic or minor children, etc. Where tenancies or leasehold estates are involved, or where it is a case of alterations or repairs, the claim must be filed in the court of common pleas within three months of completion; in other cases within six months. Where a sub-contractor has three months within which to file his claim he must give the owner written notice and a sworn statement of the claim at least thirty days before such claim is filed, and where he has six months, the notice and statement must precede the filing of the claim at least forty-five days. *Scire facias* must be issued within two years, and verdict rendered thereon within five years.

RHODE ISLAND. — Every building or other improvement erected or repaired, by contract with or consent of the owner, is subject to a lien for all work done or materials furnished in the construction or repair of the same. By Act of 1906, contractors or sub-contractors shall have lien for work on labor furnished within forty days next preceding time of notice and within ten days after giving such notice shall record copy with town clerk or recorder of deeds; this act repeals only acts inconsistent herewith. Persons furnishing materials must give notice to owner, and record same in town clerk's office within sixty days after materials are placed on land.

To enforce lien, the claim, including an account and description of property, must be filed in the office of the town clerk of town where land is situated within four months after default in any payment if work is done by written contract, or within six months after commencement of work under verbal contract. A petition in equity must be filed in the clerk's office of the supreme court within twenty days after the filing of the claim.

SOUTH CAROLINA.—Any person to whom a debt is due for labor performed or materials furnished and actually used in the erection, alteration, or repair of any building or structure on real estate, by virtue of a contract with or consent of the owner or his agent, has a lien on the buildings and land for his pay. A sub-contractor may also have such lien by notifying the owner and the original contractor before furnishing labor or materials of his intention to claim lien, but the whole amount of such liens must not exceed amount of lien of original contractor. If the owner is not the contracting party, he may prevent any lien from attaching by giving written notice that he will not be responsible for the debts of the contractor.

The claimant, within ninety days after ceasing to labor or furnish materials, must file in the office of the register of mesne conveyances of the county a statement of his account, with a description of the property and the owner's name. Suit must be begun within six months after ceasing to labor.

SOUTH DAKOTA.—Every person doing labor upon, or furnishing materials, machinery, or fixtures for, any building or other improvement on land, by virtue of any contract with the owner, or his agent, trustee, contractor, or sub-contractor, unless otherwise secured, may have a lien on the land and the buildings, etc. Notice of lien must be filed within four months after performing labor or furnishing materials, and suit must be commenced within six years, or within thirty days after demand by owner.

TENNESSEE.—There is a lien on any lot of land upon which a house has been built or repaired, or fixtures or machinery furnished or erected, or improvement made by special contract with the owner or his agent in favor of all persons doing any work or furnishing any materials on or about the same. If a mortgagee has written notice of a contract to furnish such labor and materials before the work is begun and fails to object within ten days, the lien will take precedence over the mortgage. The lien includes the buildings on the land, and continues for one year after completion of the work. Sub-contractors and workmen must, at the time of beginning to work, give notice to the owner of their intention to claim a lien, or they may, within thirty days after building is completed, or their contracts expire, notify in writing the owner that lien is claimed, and such lien shall thereupon have precedence over all other liens for ninety days, providing statement be filed with county registrar.

TEXAS.—Master-builders, and mechanics of all kinds, contracting to erect buildings of any description, have a lien in the nature of a mortgage on the buildings and land, provided the contract is in writing, or, if verbal, stated on oath and copy rendered to debtor, and recorded in the office of the clerk of the county where the building is, within four months after debt has accrued. All persons doing any work or furnishing any materials on any such building may, within thirty days after indebtedness accrues, if their work or materials are not paid for, deliver to the owner a copy of their account, and he is then authorized to retain enough to pay them out of the amount due the contractor. Mechanics have a lien on articles repaired.

UTAH.—Any person who furnishes labor or materials in the construction or repair of any building, structure, or improvement on land, or in working a mine, has a lien thereon, provided he files with the county recorder within sixty days after the completion of his contract, if an original contractor, or forty days after ceasing to labor or furnish materials, etc., if a sub-contractor, a claim, under oath, containing a statement of his demand after deducting all credits, name of owner if known, and employer, the terms of the contract, and description of property. Suit for foreclosure must be commenced within one year after completion of contract, or suspension of the work for thirty days.

VERMONT.—When any contract is made, in writing or otherwise, for the erection, repair, or alteration of any building, or for furnishing any materials about the same, the person proceeding under the contract has a lien on the house and land, which continues for three months after payment of the claim is due, provided the claimant file in the clerk's office of the town where the building is, a memorandum signed by him showing his claim, and commences an action to enforce the same within said three months. The property on which lien is claimed is to be attached within five months after judgment, and copy of record filed in town clerk's office, whereupon lien becomes one in nature of mortgage, and is foreclosed as such. Sub-contractor may have similar lien not exceeding amount due original contractor by filing lien and giving notice to owner. Mechanics have a lien on articles repaired.

VIRGINIA.— All persons performing labor or furnishing materials for the construction or improvement of buildings or other structures, or repair thereon if ordered by owner or his agent, have a lien thereon, and on so much land as is necessary to the convenient use thereof. A general or a sub-contractor or material man must, within thirty days after completion of building or furnishing materials, file in the county clerk's office (or, if the property be in the city of Richmond, in the clerk's office of the chancery court), a sworn statement of account, with a description of the property, and claim a lien thereon. Sub-contractors or material men must, also, within thirty days, notify in writing the owner of the property or his agent, and the owner will be liable to the sub-contractor or material man for so much of his claim as does not exceed the amount due by the owner to the general contractor at the time notice is given. Sub-contractor may, before performing labor or furnishing materials to general contractor, give owner written notice of intention to claim lien, stating probable amount, and within thirty days after structure is completed give to owner and contractor a verified statement of account, and owner shall thereupon be personally liable to extent of amount then due contractor. Suit to enforce lien must be brought within six months.

WASHINGTON.—Mechanics and material men may have liens on buildings and lands on which they stand, by filing notice thereof, within ninety days of the completion of the work of furnishing materials, with the county auditor, stating amount due above all set-offs. Suit must be brought within eight months after such filing.

Lumbermen may have a similar lien on logs and timber by filing notice of lien in county auditor's office within thirty days after debt accrued, and bringing suit thereon within eight months thereafter. Farm laborers have lien on crops if filed within forty days. Blacksmiths, machinists, wagon makers, boiler makers, etc., have a lien on articles upon which they have worked for a period of one year. Persons performing labor for any person or corporation, in the operation of any railway, canal, or transportation company, or any water, mining, or manufacturing company, saw mill, etc., shall have a lien upon the franchise, earnings, and property of such person or corporation for labor performed during the six months preceding the filing of his claim with the county auditor, which must be done within ninety days after completion of such labor.

WEST VIRGINIA.—Every person who shall perform any work or labor, or furnish any materials in the construction, alteration, or repair of any house, mill, or other building, or appurtenance, bridge, or other structure, by virtue of a contract with the owner or his agent, or with a principal contractor, has a lien on the buildings and land for his pay. He must, within sixty days after ceasing to labor or furnish materials, file with the clerk of the court for the county where the property is a true account under oath of the amount due, a description of the property, and the owner's name. Subcontractors and workmen must, within thirty-five days after their employment expired, or materials were furnished, or within ten days after being notified by the owner so to do, give to the owner an itemized account of the amount due them, and notice that a lien is claimed therefor. Such account need not be filed unless demanded, if sub-contractor, etc., before commencing work notify owner that a lien will be claimed. The aggregate of such liens shall not exceed the amount due to the original contractor at the time such notice is given, provided contract is recorded in county clerk's office. Suit to enforce the lien must be begun within six months.

WISCONSIN.—Every person furnishing labor, materials, or machinery, in the erection, construction, repair, protection, or removal of any building, bridge, water lot, wharf, well, or fountain, fence, sidewalk, etc., may have a lien thereon to the extent of forty acres, or, within the limits of an incorporated city or village, one acre. A claim for lien must be filed with the clerk of the circuit court within six months from the date of the last charge, and action brought within one year from such date, unless, within thirty days before the expiration of the year, the time is extended for another year, by annexing to the claim on file an affidavit showing the interest of the claimant in the property by virtue of such lien.

Sub-contractors and employers have a similar lien to the extent of amount due from owner to contractor, if notice is given to owner within sixty days after the last charge, and claim of lien filed within six months.

WYOMING.—Any person performing labor or furnishing materials, fixtures, or machinery for any building, erection, or improvement on land or for repairing the same, may have a lien on the land to the extent of one acre, or, if in a city, town, or village, on the lot on which the building is situated. Every original contractor within four months, and every subcontractor, journeyman, or laborer within ninety days, after indebtedness accrues, must file with the register of deeds of the county an account, under oath, of the amount due after allowing for credits, a description of the property, and name of owner and contractor, if known; but original contractors cannot file lien until sixty days after completion of contract. Persons other than original contractors must, ten days before filing lien, give written notice of the claim and amount thereof. Proceedings to foreclose lien must be begun within six months.

CHAPTER XXXVII.

OF THE DISPOSAL OF PROPERTY BY WILL.

SECTION I.

OF WILLS.

Few persons are aware how very difficult it is to make an unobjectionable will. There is nothing one can do, in reference to which it is more certain that he needs legal advice, and that of a trustworthy kind. Eminent lawyers, not practised in this peculiar branch of the law, have often failed in making their own wills, both in England and in this country. And there are seldom blank forms for wills printed and sold, as there are for deeds and leases. Nevertheless, it may happen that one is called upon to make his own will, or a will for his neighbor, under circumstances which do not admit of delay; or he may have some interest in the will of a deceased person, and questions may have arisen, which some knowledge of legal principles will answer. We shall try to state here what may be of use in such cases; and shall append a form for a will.

Any person of sound mind and proper age may make a will. A married woman cannot, unless in relation to trust property, whereof the trust or marriage settlement reserves to her this power; or the statute law of her State gives it, as is the case now in many States.

One must be of full age in order to devise real estate. But in most of our States minors may bequeath personal property; and a frequent limitation of the age for such bequest is eighteen years for males, and sixteen years for females.

The testator should say distinctly, in the beginning of the instrument, *that it is his last will.* If he has made other wills, it is usual and well to say, "hereby revoking all former wills;" but the law gives effect to a last will always.

It should close with the words of attestation: "In witness whereof, I have hereunto signed and sealed this instrument, and published and declared the same as and for my last will, at on this day of ." Then should follow the signature and seal; for this latter, although not always required by law, is usually and properly affixed.

The witnessing part is very material. The requirements in the different States are not precisely alike; but they are all intended to secure such attestation as will leave the fact of the execution of the will, and its publication as such, beyond doubt. In a very few States, it is enough if the signature be proved by credible witnesses, although there be no witnesses who subscribed their names to the will. In many, two subscribing witnesses are enough. It is so in the provinces of the Dominion of Canada, generally. But in some States it is necessary, *and in all I recommend*, that the testator should ask *three* disinterested persons to witness this will; and should then, in their presence, sign and seal it, and declare it to be his will; and they should then, each in the presence of the testator and of the other witnesses, sign their names as witnesses. See the Abstracts at the close of this chapter.

Each should see the execution which he says he witnesses; and the signing by the witnesses should all be seen by the testator; but the law is satisfied if the thing is done near the testator, and where he can see if he chooses to look. If the testator is too feeble to write his name, let him make his mark; and for this purpose any mark is enough, although a cross is commonly made. So, if a witness cannot write his name, he may make his mark; but this should be avoided if possible.

Over the witnesses' names should be written their attestation; and any alteration in the will should be noticed. If the attestation be in the following words, it will be safe in any part of this country:

"At on this day of the above-named signed and sealed this instrument, and published and declared the same as and for his last will; and we, in his presence, and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses."

Witnesses should be selected with care, where that is possible; for if any question arises about the testator's sanity, or anything of the kind, their evidence is first to be taken, and is very important. But any persons competent to do ordinary acts of business may be witnesses. Nor do the usual qualifications for business apply. Thus, married women and minors may be witnesses of wills. But no person should be called upon to witness a will who is a legatee, or an executor, or otherwise interested in the will. If such a person were a witness, it might not avoid the will; but a legatee would lose or be obliged to renounce his legacy; and, generally, it might lead to unintended results. What was said in relation to deeds, of witnesses remembering, etc., or proof of handwriting in case of their death or absence, is true also of wills.

As to the body of the will, the testator must express his wishes as clearly and accurately as possible; and, unless he has good legal advice, he should make the disposition of his property as simple as possible.

The word "bequeath" applies, properly, to personal estate only; the word "devise," to real estate only. It is safe enough to begin, "I give, bequeath, and devise my estate and property, as follows: that is to say,"—and then go on and tell what shall be done with this and that piece of property, or sum of money.

Words of inheritance should be added to any devise of land (if not intended for the life of the devisee only), as was said in reference to deeds; although they are not required in wills so peremptorily as in deeds. The words of inheritance are,—To A B "and his heirs."

If it is intended, as usually is the case, that the will should apply to all the real estate possessed by the testator at the time of his death, although purchased after the will is made, there should be a clause expressing this intention.

If children are not provided for in a will, the law sometimes presumes they were forgotten; and it gives to any such child the same share as if there were no will, unless the omission is explained in the will, or by evidence, and shown to have been intentional. If the child were provided for in the lifetime of the father, the law, generally, would not presume that the child was forgotten; it is best, however, to guard against any question of the kind, by saying that the omission to give to the child anything is intentional.

A testator should always name his executors; but the will is perfectly good without any executor being named, for the court of probate will appoint an "administrator with the will annexed."

If the testator desires that his executor or trustee should not give bonds, he should say so distinctly in his will.

Nuncupative wills are wills made by word of mouth.

Olographic wills are wills written entirely by the testator's hand.

In the provinces of the Dominion of Canada, generally the laws as to the construction, effect, and execution of a will are the same as in the United States: the principal difference being that, in the Province of Quebec, the French rule prevails, and an olograph will is valid without witnesses.

SECTION II.

CODICILS.

A CODICIL is a little additional will. That is, it is a testamentary disposition, not revoking the former will, but varying it in some way, or making changes in it. There can be but one will, and that the last; but there may be any number of codicils, all valid. The changes made by a codicil in a will, or in former codicils, should be very distinctly stated; and some words like these should be used: "I hereby expressly confirm my former will, dated excepting so far as the disposition of my property is changed by this codicil." And the codicil should be called, at the beginning and end, a codicil, and executed and witnessed in the same manner as a will.

If a codicil gives one a legacy, who has already one by the will, the codicil should state whether it gives the second legacy instead of the first, or in addition to it. And if advances are made to a child during life, there should be an indorsement on the will (but a statement in the will or codicil would be better), stating whether these advances are to be charged to him, and in what way, whether with interest, etc.

SECTION III.

REVOCATION OF WILLS.

THE law concerning the revocation of a will is quite nice and technical. A codicil, we have seen, does not revoke, and a new will does. So might tearing off the name; but then the question might come, who tore it off? It is better to leave neither this nor any other question: and therefore to destroy a will which it is intended to revoke. If the will is out of the testator's reach and power, and so cannot be destroyed, it would be best to make a new will, revoking the old one; which any testator can always do.

A will is revoked by the operation of law, if the testator afterwards marry and have a child. If the testator, after this, intends that his will shall take effect, he should expressly confirm it; and the correct way to do this would be by making a new will. If he leaves anything to his wife, and intends that she should have it instead of dower, or of the additional rights which recent statutes in some of the States have given her, he should say so. And then she will not have both, but may choose between the provision of the law and that of the will, taking whichever she prefers, and leaving the other.

For the rights of the wife or widow in the several States, I refer back to the abstract of the statutes of the several States, in Chapter V.

Annexed to this chapter is an abstract of the laws of all the States relating to wills.

It is impossible to do more than to give such forms and rules as will be applicable to all wills, and enable any person to draw a simple will with safety. No one can express accurately provisions for trust estates, remainders, executory devises, etc., without knowing the law on these subjects,—and this is an extensive and difficult department of the law. All that is necessary, and may be relied upon as generally sufficient, is as follows:

(267.)

Form of a Will.

I, of (*place and occupation*), make this my last will. I give, devise, bequeath my estate and property, real and personal, as follows, that is to say:

Then follow all the provisions and disposition of property which the testator intends, stated fully, plainly, and as accurately as possible, paying due regard to the rules and principles laid down in the chapter of this book on this subject. And if these provisions are carefully presented in distinct and intelligible language, the courts will generally supply whatever of technicality is wanting. Then follows, first, the appointment of an executor, and then the execution, and finally the declaration of the witnesses, thus:

I appoint (*name, residence, and occupation*) executor (*or executors if more than one be desired*) of this my will.

In witness whereof, I have signed and sealed and published and declared this instrument as my will, at (*place*), on (*date*).

(*Signature.*) (*Seal.*)

The said at said (*place*), on said (*day*), signed and sealed this instrument, and published and declared the same as and for his last will in our presence. And we, at his request, and in his presence, and in the presence of each other, have hereunto written our names as subscribing witnesses.

(*Here follow the names of three witnesses.*)

A codicil should be written thus:

I, of (*place and occupation*), do make this my codicil, hereby confirming my last will made on the (*date of the will*), and all my former codicils (*if there be any*), so far as this codicil is consistent therewith; and do hereby—

Then follows whatever disposition the testator chooses to make, stating and describing it as he would if it were a will, and executing it, and having it attested in the same manner as if it were a will, excepting that, instead of calling it a will, wherever that word occurs, he says, "codicil" instead of "will." If he gives in his will or codicil a legacy to a woman, it is generally best to add "this legacy (or bequest) to be for her sole and separate use, independent of her husband, at *all times.*

(268.)

Copy of a fuller Form of a Will.

Be it Remembered, That I, of the city of in the State of Esquire, do make this my last will and testament, in manner following. That is to say,—

I order and direct that all my just debts shall be paid with convenient speed.

I give unto Mr. of said city, merchant, the amount of moneys due and owing from him to me, according to the tenor and effect of four promissory notes signed by him, viz: one dated October 16, 1819, for ninety-six hundred and eighty dollars; one dated August 9, 1822, for five thousand dollars; another dated August 9, 1822, for forty-five hundred and fifty-eight $\frac{86}{100}$ dollars; and another dated August 15, 1822, for fifty-six hundred dollars: and I order said four notes to be cancelled.

To the wife of said I give an annuity of six hundred dollars, to be paid her in two equal and half-yearly payments of three hundred dollars each.

It is my will, and I order and direct that a trust fund of ten thousand dollars shall be raised out of my estate and invested at interest, the income and produce of which trust fund I give unto of single woman, to be paid to her half-yearly, during her natural life. And at the decease of the said the principal sum or trust fund shall be paid to and among such person and persons in such shares and portions as she, the said by any writing by her signed in the presence of two or more credible witnesses, shall give, direct, and appoint. And in default of such appointment, then said trust fund, or principal sum shall go, as the residue of my estate, to the residuary legatee hereinafter named.

I also direct that another trust fund of ten thousand dollars shall be raised out of my estate and invested at interest. And I give the interest and produce of this trust fund, when and as it accrues, unto the wife of . It is my will that the income of this fund, or principal sum shall, during the natural life of said either be paid into her proper hand, or upon her order or receipt, signed by her alone, notwithstanding her coverture. And I declare that neither the principal nor income of this fund shall be subject to the control, debts, or engagements of the present or any future husband of said the same being intended for her sole and separate use.

At the decease of said I give said principal sum or trust fund to the issue of said and in default thereof to such other person or persons as she, by a last will, or any writing in the nature of a last will, shall give, direct, or appoint the same; and in default of such appointment, it is my will that said trust fund or principal sum shall be disposed of and pass as part of the residue of my estate.

I give to an annuity of three hundred dollars, to be paid by two equal sums to said half-yearly, during her natural life.

To of in the County of widow, I give an annuity of one hundred dollars, to be paid her, during life, in quarter-yearly payments.

I also give unto of in the County of widow, an annuity of two hundred dollars, to be paid in quarter-yearly payments during her life.

I order my executor, hereinafter named, to pay of either in money, or such articles as his comfortable maintenance may require, fifty dollars annually during his life, at such times as said executor shall think proper.

To wife of of I give an annuity of one hundred dollars, to be paid during her life quarterly.

To wife of of I give three hundred dollars, and direct three notes, held by me, signed by her husband, for one hundred dollars each, to be cancelled.

To wife of of there shall be paid in money, or delivered in articles necessary for her support, at the discretion of the executor of this my will, one hundred and fifty dollars annually, during her life, at such time and in such portions as he shall choose.

I give to son of one thousand dollars, and order that he shall be charged with such amount of moneys as he shall be my debtor for, upon promissory notes, at my decease.

I devise the wood-lot in which I bought of one to wife of above named, to hold to her for life, the remainder I give to the child or children of said who shall survive her, his, her, or their heirs for ever.

If shall be a member of my family at the time of my decease, she shall and may continue to reside in my dwelling-house and participate in the use of the stores and furniture, in common with others of my family, for the term of six months thereafter.

It is my will that a debt of three hundred and thirty-two dollars, due me from of shall be cancelled.

To each of those of the following named persons who shall be in my service at the time of my decease, I give one hundred dollars, viz:

My will is that all annuities hereinbefore given shall take date from the day of the probate of this will; and all legacies, not annuities, shall be paid within eight months from the same period.

It is my will that all the capital or principal sums which shall be requisite to yield the several annuities above mentioned may, by my executor, be paid to to be held and managed by said corporation as trustees under this will: or, if the said executor and the parties beneficially interested therein shall so elect, said capital or principal sums, or any of them, may be placed in the hands of such trustee or trustees as shall, upon application to the Supreme Court of sitting in chancery, be appointed to receive the same, and perform this, my will, in that behalf.

I hereby authorize and empower whoever shall assume the execution of this will, to make sale of, and convey any parcel or parcels of real estate, of which I may die seized, for the purpose of raising any and all such sums of money as shall be required for the trust funds, annuities, and legacies hereinbefore directed to be created, given, and bequeathed. All such sales shall be made by public vendue, after notice thereof shall have been given in two or more newspapers printed in the city of for the term of fourteen days at least prior to such sales being made.

All the residue of my estate, real, personal, and mixed, wheresoever it may be found, and of whatsoever it may consist, I give and devise unto to hold to him and his heirs forever.

I hereby revoke all wills by me heretofore made, and constitute the said executor of this my last will.

In Witness Whereof, I, the above-named testator, have hereunto set my hand and seal, this twenty-sixth day of in the year of our Lord eighteen hundred and

[L. S.]

Then and there signed, sealed, and published by the testator, as and for his last will, in the presence of us, who, at his request, in his presence, and in presence of each other, have hereto set our names as witnesses.

ABSTRACT OF THE LAWS OF ALL THE STATES AND TERRITORIES CONCERNING WILLS.

ALABAMA.—Every person of full age and sound mind may make a will. It must be in writing, signed by the testator, attested by at least two witnesses in the presence of the testator. Persons of the age of eighteen may dispose of personal property by will.

ALASKA.—Persons of full age and of sound mind may make a will disposing of real and personal property. It must be in writing, signed by the testator, or at his direction and in his presence, and attested by two competent witnesses subscribing their names in the testator's presence.

ARIZONA.—Every person of full age or married may make a will. It must be in writing, signed by the testator and attested and subscribed in his presence by two or more witnesses. If wholly written by the testator no witnesses are necessary.

ARKANSAS. — Every person over twenty-one years of age may devise real and personal property, and persons over eighteen may bequeath personal property. The testator must subscribe his name at the end of the will, in the presence of two witnesses or shall acknowledge to them it was so subscribed and shall declare it to be his will, and the witnesses must sign at the request of the testator. When the entire body and signature of the will are in the handwriting of the testator it may be proved by the evidence of three witnesses to the handwriting and signature without subscribing witnesses.

CALIFORNIA. — Every person over the age of eighteen, of sound mind, may dispose of property, real or personal, by will. Wills, unless holographic, must be subscribed at the end by the testator, or some person in his presence, and by his direction, and must be attested by two witnesses to whom the testator declares it to be his will in the presence of, and at the request of, the testator, and in the presence of each other. Bequest for charitable purposes must be made at least thirty days before death of testator and cannot exceed one-third of estate if he leave legal heirs.

COLORADO. — Every person twenty-one years of age if a male, or eighteen years if a female, may dispose of property, real or personal, by will, and persons seventeen years of age may dispose of personal estate. All wills must be in writing, signed by the testator or some one in his presence, at his request, and attested in his presence by two or more credible witnesses.

CONNECTICUT. — Every person eighteen years of age, or more, and of sound mind, may make a will, and every devise passes the whole title unless clearly limited; the will must be in writing, signed by the testator, and attested by three witnesses in his presence, and in the presence of each other.

DELAWARE. — Any person of the age of twenty-one years, and of sound mind, may make a will. The will must be in writing, signed by the testator, attested and subscribed in his presence by two credible witnesses.

DISTRICT OF COLUMBIA. — Any person twenty-one years of age if a male, or eighteen if a female, and of sound mind, may make a will. All wills, unless holographic, must be signed by the testator and attested and subscribed in his presence by two credible witnesses. Nuncupative wills require two witnesses and must be reduced to writing within ten days.

FLORIDA. — Every person of the age of twenty-one years, and of sound mind, may make a will, and such will must be signed by the testator, or by some one in his or her presence and by his or her direction, and attested and subscribed in his or her presence, by two or more witnesses. Nuncupative wills must be proved by three witnesses present.

GEORGIA. — Persons of fourteen years of age and sound mind may make a will. A married woman may make a will of her separate estate. Wills must be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by at least three competent witnesses.

IDAHO.—Any person of the age of eighteen may make a will. It must be signed by the testator in the presence of two witnesses, who must sign in the presence of each other, unless the will be nuncupative or holographic.

ILLINOIS.—Any male of twenty-one years, or female of eighteen years, of sound mind and memory, may make a will. It must be in writing, signed by the testator, or by some one in his presence, and by his direction, and attested by two or more credible disinterested witnesses in the presence of the testator.

INDIANA.—All persons, twenty-one years of age and of sound mind, may make a will and devise entire estate saving provision for widow. The will must be in writing, signed by the testator, or in his presence, and by his direction, and attested and subscribed in his presence by two or more competent witnesses.

INDIAN TERRITORY.—All persons of full age may make a will of both realty and personalty. Persons eighteen years of age may devise goods and chattels. A will must be subscribed by the testator, or by his direction, or acknowledged by him to be his will, in the presence of two witnesses each of whom shall at his request subscribe as witnesses.

IOWA.—Testator must be of full age and sound mind. Personal property to the value of three hundred dollars may be bequeathed by a verbal (nuncupative) will, attested by two competent witnesses. All other wills must be in writing, witnessed by two competent witnesses, and signed by the testator, or by some one in his presence, and by his express direction.

KANSAS.—Any person of full age, of sound mind, may make a will. It must be in writing signed at the end by the testator, or by some one in his presence, and by his direction, and it must be attested in the presence of the testator by two or more competent witnesses, who saw the testator sign, or heard him acknowledge the will for his last will and testament.

KENTUCKY.—The testator must be of sound mind, and not under twenty-one years of age. Will must be in writing, signed by the testator, or some one for him, and, if not wholly written by himself, must be subscribed or acknowledged in the presence of at least two credible witnesses, who must sign in the presence of the testator.

LOUISIANA.—Wills are of three kinds: 1. Nuncupative, or open testaments. 2. Mystic, or sealed testaments. 3. Holographic testaments. Nuncupative testaments, by public act, must be received by a notary public in the presence of three witnesses, residing where the will is executed, or five witnesses not residing in such place. It must be dictated by the testator, and written by the notary as dictated, then read to the testator in the presence of the witnesses, and signed by the testator, and attested by all the witnesses. Nuncupative testaments, by private act, must be written by the testator himself, or from his dictation, in the presence of five witnesses residing in the place where the will was made, or seven not residing in such place, or it is sufficient if the testator presents the paper, on which he has written the will, declaring that the paper contains his will. In country places three resident, or five non-resident witnesses will be sufficient if a larger number cannot be obtained. It must be read by the testator to the witnesses and signed by testator and all the witnesses. Mystic, or sealed instruments, are made as follows: The testator must sign his dispositions, and the paper then closed and sealed. He shall then present it thus closed to a notary public and three witnesses and declare it to be his last will and testament in their presence. The notary must then draw up the act of superscription on the same paper or envelope, and sign it together with the testator and the witnesses. Holographic wills are entirely written, dated, and signed by the testator himself. No woman or male child under sixteen years of age can be a witness. Any person over the age of sixteen may make a will.

MAINE.—The testator must be of sound mind, and twenty-one years of age, and the will must be signed by the testator, or some one in his presence, and at his request, and subscribed in his presence by three credible witnesses, not interested in the will.

MARYLAND.—Every person of twenty-one years of age if a male, or eighteen years if a female, may make a will. The will must be in writing, signed by the testator or some one in his presence, and by his express direction, and attested and subscribed in his presence by two or more credible witnesses.

MASSACHUSETTS.— Every person of full age and sound mind may make a will, which must be in writing, signed by the testator or by some one in his presence and by his direction and attested and subscribed in his presence and in the presence of each other by three or more competent witnesses to whom the testator has declared it to be his will. Husband deserted by wife or living apart for justifiable cause may (after hearing in Probate Court and decree) make will as if unmarried.

MICHIGAN.— The testator must be of full age and sound mind. A devise passes the whole interest, unless specially limited. The will must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in his presence by two or more competent witnesses who are disinterested.

MINNESOTA.— The requirements of a will are the same as in Michigan.

MISSISSIPPI.— The testator must be twenty-one years old, whether male or female, and of sound mind. The will must be signed by the testator, or some one in his presence, and by his direction, and, if not holographic, attested by two credible witnesses, who sign in presence of the testator.

MISSOURI.— Males of eighteen years of age may make will of personal property; and of twenty-one, of both real and personal estate. Females of eighteen may make will of both real and personal estate. The will must be in writing, signed by the testator, or some one by his direction, in his presence, and attested by two or more competent witnesses, who sign in the presence of the testator.

MONTANA.— Every person, over the age of eighteen, and of sound mind, may dispose of property, real or personal, by will. The will must be signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by two or more competent witnesses to whom he has declared it to be his will. A holographic will need not be witnessed.

NEBRASKA.— Any person of full age and sound mind may make a will. Wills must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in the presence of the testator by two or more competent witnesses.

NEVADA. — The testator must be eighteen years of age and of sound mind. The will must be in writing, signed and sealed by the testator, or by some one in his presence, by his direction, and attested in his presence and in the presence of each other, by two competent witnesses. Holographic will need not be witnessed.

NEW HAMPSHIRE. — Any person of twenty-one years of age and sound mind may make a will, to be in writing, signed and sealed by the testator, or some one in his presence, and by his direction, and attested and subscribed by three or more credible witnesses.

NEW JERSEY. — Testator must be twenty one years of age and of sound mind. All wills, after the year 1850, must be in writing, signed by the testator, or the signature acknowledged by him, and he must declare the writing to be his last will in the presence of two witnesses, who are present at the same time, and who must subscribe the same in presence of the testator.

NEW MEXICO. — Any person twenty-one years of age and of sound mind may make a will. Wills may be written or verbal. If written, they must be signed by the testator, or some person for him, and attested by two or more credible witnesses who must sign as witnesses at his request, in his presence, and in the presence of each other. Verbal wills must be attested by the same number of witnesses, who must testify that testator was of sound mind and judgment, and must all be present, see and hear testator speak, and each must understand clearly and distinctly every part of the will.

NEW YORK. — Males of eighteen and females of sixteen may make wills of personal property, but only persons of twenty-one years can devise real estate. Wills must be subscribed by the testator at the end, in the presence of each of the attesting witnesses, or acknowledged by him in their presence. There must be at least two witnesses who sign their names at the end, at the request of the testator; they should add also their residences, as failure to do so renders them liable to fine. There are certain statutory restrictions as to the amount of bequests to religious or charitable institutions.

NORTH CAROLINA. — The testator must be twenty-one years of age, and of sound mind. The will must be in writing, signed by the testator, or some one in his presence, and by his direction, and subscribed in his presence by at least two disinterested witnesses. Holographic wills, signed by the testator, and found among his valuable papers and effects, or lodged in the hands of some person for safe keeping, are allowed, and the handwriting must be proved by three witnesses.

NORTH DAKOTA. — Any person eighteen years of age and of sound mind may make a will. Wills, unless holographic, must be signed by the testator, or by some person in his presence, and by his direction, in presence of two or more witnesses to whom he declares it to be his will, and who must subscribe their names as witnesses at his request and in his presence. A holographic will need not be witnessed.

OHIO. — The testator must be of full age and sound mind, and the will must be in writing or type-written, signed at the end by the testator, or some one in his presence and by his direction, and attested by two or more competent witnesses, who saw the testator sign or heard him acknowledge the will.

OKLAHOMA.—Any person over eighteen years of age may make a will. It must be in writing, witnessed by at least two competent witnesses, who shall subscribe the same.

OREGON.—Every person twenty-one years of age may dispose of property, real and personal, by will, and every person of eighteen may bequeath goods and chattels. The will must be in writing, signed by the testator, or some one for him, and attested by two or more competent witnesses in his presence.

PENNSYLVANIA.—Any person of full age and sound mind may make a will. It must be in writing, signed by the testator, or some one in his presence for him, and attested by two or more competent witnesses.

RHODE ISLAND.—Persons eighteen years of age and of sound mind may bequeath personal property, and persons of twenty-one years may devise real estate. The will must be in writing, signed by the testator, or some one for him, and attested and subscribed in his presence by two or more witnesses.

SOUTH CAROLINA.— Persons of twenty-one years of age may devise real estate, and persons under twenty-one, but of years of discretion, may bequeath personal property. Three or more credible witnesses are necessary, who must sign in presence of the testator and of each other. The will must be in writing, and signed by the testator.

SOUTH DAKOTA.—Every person eighteen years of age may make a will. It must be in writing, subscribed by the testator, or by some person in his presence and by his direction, in the presence of two attesting witnesses to whom he declares it to be his will, and who must subscribe the same as witnesses at his request and in his presence. A holographic will need not be witnessed.

TENNESSEE.—Any person of sound mind, and twenty-one years of age, may dispose of real estate by will. Males at fourteen, and females at twelve, may bequeath personal property. Wills of real estate must be subscribed by the testator, or some one for him, and attested and subscribed in his presence, by at least two disinterested witnesses. Holographic wills found among the testator's valuable papers, or deposited for safe keeping, are allowed, if the handwriting is proved by three witnesses. No subscribing witnesses are necessary to wills of personalty, but two witnesses or equivalent testimony are necessary to establish them.

TEXAS.— Testator must be twenty-one years of age, and sound mind, and the will must be signed by testator, or for him in his presence, and by his direction, and if not holographic, attested by two or more credible witnesses over fourteen years of age. Will may be type-written.

UTAH.—Any person of the age of eighteen years and of sound mind may dispose of property, real and personal, by will except that a husband may not dispose of more than two-thirds of his real property without the consent of his wife. The will must be in writing, subscribed by the testator, in the presence of two or more witnesses, declaring it to be his will, and the witnesses must subscribe as witnesses, at his request, in his presence, and in the presence of each other.

VERMONT.—Every person of full age and sound mind may make a will. A will must be in writing, signed by the testator, or for him, in his presence, and by his direction, and attested and subscribed by three or more credible witnesses, in his presence, and in presence of each other.

VIRGINIA.—Every person twenty-one years of age, and of sound mind, may make a will of real estate, and persons of eighteen years may bequeath personal property. The will must be signed by the testator, or some one for him, by his direction, and in his presence, and, unless holographic, attested in his presence, and in the presence of each other, by two or more competent witnesses.

WASHINGTON.— Every male above the age of twenty-one years, and every female above the age of eighteen, may dispose of property, real and personal, by will. The will must be in writing, signed by the testator, or by some person under his direction, and attested by two or more competent witnesses, subscribing their names in the presence of the testator.

WEST VIRGINIA.—The testator disposing of real estate must be twenty-one years of age, and of sound mind. The will must be in writing, signed by the testator, or by some one for him, in his presence, and by his direction, and unless holographic, the signature must be made and the will acknowledged in the presence of two competent witnesses, present at the same time, and who subscribe in the presence of the testator. Testators, eighteen years of age, may dispose of personal property by will.

WISCONSIN.—Every person of full age, and any married woman of the age of eighteen years, may make a will. Wills must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in his presence by two or more competent witnesses.

WYOMING.—Any person of full age and sound mind may make a will. The will must be in writing, signed by the testator, or by some other person, in his presence and by his direction, and attested by two competent witnesses.

CHAPTER XXXVIII.

EXECUTORS AND ADMINISTRATORS.

An executor is a person named in the will of a deceased person, to settle his or her estate. There may be one or more; and they may be male or female. An administrator is one appointed by the court to settle the estate of a deceased person. If the deceased left a will, but did not appoint an executor, or the appointed executor refuses to act, or resigns, or dies, or for any reason fails to act, an administrator is appointed by the court "with the will annexed." The husband of a deceased wife, or the wife of a deceased husband, has generally the right to be appointed administrator; after them the next of kin in the order of relationship. But the courts have some discretion in the matter.

They act as the personal representatives of the deceased, having in their hands his means, for the purpose of discharging his liabilities, or executing his contracts, and of carrying into effect his will, if he have left one; and, in general, they are liable only so far as these means (called *assets*), in their hands, are applicable to such a purpose. But they may become personally liable; and a clause in the statute of frauds refers to this subject, making them not liable to pay any debt out of their own means, unless they give a promise to that effect, in writing, signed by them.

In this country, the judicial officer, or judge who has the charge of the settlement of estates, of the proof of wills, and of proceedings under them, is generally called the Judge of Probate. But in some States he is called Surrogate, Register or Registrar of Wills or of Probate, Judge of the Orphan's Court, etc. His powers and duties are very similar all over the country. From his decrees or decisions an appeal may generally be taken, by a party who thinks himself aggrieved, to some higher court. The Judge of Probate is usually a county officer, and his jurisdiction is limited to his county.

If an executor or administrator receives, as such, a promissory note or bill of the deceased, and indorses the same with his name, without adding "executor," or "administrator," he is liable upon it personally. If he makes a note or bill, signing it "as executor," he is personally liable, unless he expressly limits his promise to pay, by the words, "out of the assets of my testator," or, "if the assets be sufficient," or in some equivalent way; but a note or bill so qualified would not be negotiable, because on condition. If an executor or administrator submits a disputed question to arbitration, in general terms, and without an express limitation of his liability, and the arbitrators award that he shall pay a certain sum, he is liable to pay it whether he has assets or not. But if the award be merely that a certain sum is due from the estate of the deceased, without saying that the executor or administrator is to pay it, he is not precluded from denying that he has assets.

Where a contract of the deceased is of an executory nature, and the personal representative can fairly and sufficiently execute all that the deceased could have done, he may do so, and enforce the contract. But where an executory contract is of a strictly personal nature—as, for example, with an author for a specified work, or with an artist for a painting, the death of the writer before his book is completed, or of the artist before the painting is finished, absolutely determines the contract, unless what remains to be done—as, for example, in the case of a book, the preparing of an index, or table of contents, etc., can certainly be done as well and to the same purpose and effect by another.

If executors or administrators pay away money of the deceased by mistake, or enter into contracts for carrying on his business for the benefit of his estate, and to wind up his affairs, they may sue on such contracts either in their individual or their representative capacities; but they should sue in the latter capacity, in order to avoid a set-off against them of their individual debts.

The title of an administrator does not exist until the grant of administration. Then it goes back to the death of the deceased; but only in order to protect the estate, and not for any other purpose. And if an agent sells goods of the deceased, after his death, and in ignorance of his decease, the administrator may adopt the contract, and sue upon it.

On the death of one of several executors, either before or after probate, the entire right of representation survives to the others. But if an administrator dies, or a sole executor dies, no interest and no right of representation is transmitted to his personal representatives.

An executor derives his authority from the will, and his duties begin at the death of the testator. They may be stated thus:

1. He should cause the deceased to be buried in a suitable manner.

2. He should offer the will for probate as soon as he can with a reasonable regard to his convenience; and in proving the will, filing bonds, giving notice, making and returning an inventory, and the like, he must conform to the law of the State and the rules of the probate; and he will obtain at the office sufficient information on all these points.

3. He must collect the property, and after paying the debts, he must distribute or dispose of the remainder as the will directs.

4. He must render his account from time to time, until a final settlement of the estate is made, and will be directed at the Probate Office when and how to file his accounts.

An administrator derives his authority from the court. But his duties are then substantially similar to those of an executor; excepting, that he must distribute and dispose of the estate as the law requires, as he has no will to direct him, unless he is an administrator with the will annexed. The debts must be paid in a certain order. This is not precisely the same in all the States; but it is very generally as follows:

1. Funeral expenses, charges of the last sickness, and probate charges.
2. Debts due to the United States.
3. Debts due to the State in which the deceased had his home.
4. Any liens attaching to the property by law.
5. To creditors generally.

If the estate is insufficient to pay all the debts due from it, as soon as the executor or administrator finds this to be the case, he should represent the case as insolvent at the Probate Court, and thereafter follow the requirements of the law of the State and the rules of the Probate Office, in reference to insolvent estates of deceased persons.

In most of the States, all the necessary forms or instruments are given to applicants at the Probate Office.

CHAPTER XXXIX.

GUARDIANS.

GUARDIANS of all descriptions are treated by courts as trustees; and in almost all cases they are required to give security for the faithful discharge of their duty, unless the guardian be appointed by will, and the testator has exercised the power given him by statute, of requiring that the guardian shall not be called upon to give bonds. But, even in this case, such testamentary provision is wholly personal; and if the individual dies, refuses the appointment, or resigns it, or is removed from it, and a substitute is appointed by court, this substitute must give bonds.

The guardian is held, in this country, to have only a naked authority, not coupled with an interest. His possession of the property of his ward is not such as gives him a personal interest, being only for the purpose of agency. But for the benefit of his ward he has a very general power over it. He manages and disposes of the personal property at his own discretion, although it is safer for him to obtain the power of the court for any important measure. He may lease the real estate, if appointed by will or court; he cannot, however, sell the real estate without leave of the proper court. Nor should he convert the personal estate into real, without such leave.

As trustee, a guardian is held to a strictly honest discharge of his duty, and cannot act in relation to the subject of his trust for his own personal benefit, in any contract whatever. And if a benefit arises thereby, as in the settlement of a debt due from the ward, this benefit belongs wholly to the ward. And it has been held that if a guardian makes use of his own money to erect buildings on the land of his ward, without having an order of the court therefor, he cannot charge the same in account with his ward, or recover the amount from the ward. But we doubt whether a rule so severe would be applied unless for special reasons. He must neither make nor suffer any waste of the inheritance, and is held very strictly to a careful management of all personal property. He is responsible not only for any misuse of the ward's money or stock, but for letting it lie idle; and if he does so without sufficient cause, he must allow the ward interest or compound interest in his account.

To secure the proper execution of his trust, he is not only liable to an action by the ward, after the guardianship terminates, but, during its pendency, the ward may call him to account by his next friend, or by a guardian appointed by the court for the action. The courts have gone so far as to set aside transactions which took place soon after the ward came of age, and which were beneficial only to the former guardian, on the presumption that undue influence was used, and on the ground of public utility and policy.

A guardian cannot, by his own contract, bind the person or estate of his ward; but if he promise, on a sufficient consideration, to pay the debt of his ward, he is personally bound by his promise, although he expressly promises as guardian. And it is a sufficient consideration if such promise discharge the debt of the ward. And a guardian who thus discharges the debt of his ward may lawfully indemnify himself out of the ward's estate, or if he be discharged from his guardianship, he may have an action against the ward for money paid for his use. An action will not lie against a guardian on a contract made by the ward, but must be brought against the ward, and be defended by the guardian.

The guardianship is a trust so strictly personal, or attached to the individual, that it cannot be transferred from him, either by his own assignment or devise, or by inheritance or succession.

A married woman cannot become a guardian without the consent of her husband; but with that she may. A single woman who is a guardian generally loses her guardianship by marriage; but she may be re-appointed. In some States, she loses it by statute; in others, not.

CHAPTER XL.

CONSTRUCTION AND INTERPRETATION OF CONTRACTS.

SECTION I.

GENERAL PURPOSE AND PRINCIPLES OF CONSTRUCTION.

THE importance of a just and rational construction of every contract and every instrument, is obvious. If any one contract is properly construed, justice is done to the parties directly interested therein. But the rectitude, consistency, and uniformity of all construction, enables all parties to do justice to themselves. For then all parties, before they enter into contracts, or make or accept instruments, may know the force and effect of the words they employ, of the precautions they use, and of the provisions which they make in their own behalf, or permit to be made by other parties.

It is obvious that this consistency and uniformity of construction can exist only so far as construction is governed by fixed principles, or, in other words, is matter of law. And hence arises the very first rule; which is, that what a contract means is a question of law. It is the court, therefore, that determines the construction of a contract. They do not state the rules and principles of law by which the jury are to be bound in construing the language which the parties have used, and then direct the jury to apply them at their discretion to the question of construction; nor do they refer to these rules unless they think proper to do so for the purpose of illustrating and explaining their own decision. But they give to the jury, as matter of law, what the legal construction of the contract is, and this the jury are bound absolutely to take.

A distinction is to be observed between the construction of a contract and the correction of a mistake. For, if it were in proof that the parties had intended to use one word, and that another was in fact used by a mere verbal error in copying or writing, such error might be corrected by a court of equity upon a bill filed for that purpose, and the instrument so corrected would be looked upon as the contract which the parties had made, and be interpreted accordingly. But this jurisdiction is confined strictly to those cases where different *language* has been used from that which the parties intended. For if the words employed were those intended to be used, but their actual meaning was totally different from that which the parties supposed and intended them to bear, still this actual meaning would, generally, if not always, be held to be their legal meaning. Upon sufficient proof that the contract did not express the meaning of the parties, it might be set aside; but a contract which the parties intended to make, but did not make, cannot be set up in the place of one which they did make, but did not intend to make.

SECTION II.

SOME OF THE GENERAL RULES OF CONSTRUCTION.

THE subject-matter of the contract is to be fully considered. There are very many words and phrases which have one meaning in ordinary narration or composition, and quite another when they are used as technical words in relation to some special subject; and it is obvious that, if this be the subject-matter of the contract, it must be supposed that the words are used in this specific and technical sense.

So, too, the situation of the parties at the time, and of the property which is the subject-matter of the contract, and the intention and purpose of the parties in making the contract, will often be of great service in guiding the construction, because this intention will be carried into effect so far as the rules of language and the rules of law will permit. So the moral rule may be applicable, that a party will be held to that meaning which he knew the other party supposed the words to bear, if this can be done without making a new contract for the parties.

Indeed, the very idea and purpose of construction imply a previous uncertainty as to the meaning of the contract; for where this is clear and unambiguous, there is no room for construction, and nothing for construction to do. A court would not, by construction of a contract, defeat the express stipulations of the parties. And if a contract is false to the actual meaning and purpose of the parties, or of either party, the remedy does not lie in construction; but, if the plaintiff be the injured party, in assuming the contract to be void, and establishing his rights by other and appropriate means; or, if the defendant be injured by defending against the contract on the ground of fraud or mistake, if the facts support such a defence.

A construction which would make the contract legal is preferred to one which would have an opposite effect; and by an extension of the same principle, where certain things are to be done by the contract which the law has regulated in whole or in part, the contract will be held to mean that they should be done in such a way as would be either required or indicated by the law.

The question may be whether the words used should be taken in a comprehensive or a restricted sense; in a general or a particular sense; in the popular and common, or in some unusual and peculiar sense. In all these cases the court will endeavor to give to the contract a rational and just construction; but the presumption—of greater or less strength, according to the language used, or the circumstances of the case—is in favor of the comprehensive over the restricted, the general over the particular, the common over the unusual sense.

It is a rule that the whole contract should be considered in determining the meaning of any or of all its parts. The reason is obvious. The same parties make all the contract, and may be supposed to have had the same purpose and object in view in all of it, and if this purpose is more clear and certain in some parts than in others, those which are obscure may be illustrated by the light of those which are clear. Thus, the condition of a bond may help to explain the obligatory part. And the recital in a deed or agreement has sometimes great influence in the interpretation of other parts of the instrument. The contract may be contained in several instruments, which, if made at the same time, between the same parties, and in relation to the same subject, will be held to constitute but one contract, and the court will read them in such order of time and priority as will carry into effect the intention of the parties, as the same may be gathered from all the instruments taken together. And the recitals in each may be explained or corrected by a reference to any other, in the same way as if they were only several parts of one instrument.

Another rule requires that the contract should be supported rather than defeated. The court cannot, however, through a desire that there should be a valid contract between the parties, undertake to reconcile conflicting and antagonistic expressions, of which the inconsistency is so great that the meaning of the parties is necessarily uncertain. Nor where the language distinctly imports illegality, should they construe it in a different and a legal sense, for this would be to make a contract for the parties which they have not made themselves. But where there is room for it, the court will give a rational and equitable interpretation, which, though neither necessary nor obvious, has the advantage of being just and legal, and supposes a lawful contract which the parties may fairly be regarded as having made So, for the same reason, all the parts of the contract will be construed in such a way as to give force and validity to all of them, and to all of the language used, where that is possible.

All legal instruments should be grammatically written, and should be construed according to the rules of grammar. But this is not an absolute rule of law. On the contrary, it is so far immaterial in what part of an instrument any clause is written, that it will be read as of any place and with any context, and, if necessary, transposed, in order to give effect to the certain meaning and purpose of the parties. Still this will be done only when their certain and evident intent requires it. Inaccuracy or confusion in the arrangement of the parts and clauses of an instrument is, therefore, always dangerous; because the intent may in this way be made so uncertain as not to admit of a remedy by construction. Generally, all relative words are read as referring to the nearest antecedent. But this rule of grammar is not a rule of law, where the whole instrument shows plainly that a reference was intended to an earlier antecedent.

So, it is a general proposition, that where clauses are repugnant and incompatible, the earlier prevails in deeds and other instruments among the living, if the inconsistency be not so great as to avoid the instrument for uncertainty. But in the construction of wills it has been said that the latter course prevails, on the ground that it is presumed to be a subsequent thought or purpose of the testator, and therefore to express his last will.

An inaccurate description, and even a wrong name of a person, will not necessarily defeat an instrument. But it is said that an error like this cannot be corrected by construction, unless there is enough beside in the instrument to identify the person, and thus to supply the means of making the correction. That is, taking the whole instrument together, there must be a reasonable certainty as to the person. It is also said that only those cases fall within the rule in which the description so far as it is false applies to no person, and so far as it is true applies only to one. But even if the name or description, where erroneous, apply to a wrong person, we think the law would permit correction of the error by construction, where the instrument, as a whole, showed certainly that it was an error, and also showed with equal certainty how the error might and should be corrected.

Instruments are often used which are in part printed and in part written; that is, they are printed with blanks, which are afterwards filled up; and the question may occur, to which a preference should be given. The general answer is, to the written part. What is printed is intended to apply to large classes of contracts, and not to any one exclusively; the blanks are left purposely, that the special statements or provisions should be inserted, which belong to this contract and not to others, and thus discriminate this from others. And it is reasonable to suppose that the attention of the parties was more closely given to those phrases which they themselves selected, and which express the especial particulars of their own contract, than to those more general expressions which belong to all contracts of this class. But if the whole contract can be construed together, so that the written words and those printed make an intelligible contract, this construction should be adopted. Because the intention of the parties is presumed to be "alive and active throughout the whole instrument, and that no averments are anywhere inserted without meaning and without use."

SECTION III.

ON THE PRESUMPTIONS OF LAW.

THERE are some general presumptions of law which may be considered as affecting the construction of contracts.

Thus, it is a presumption of law that parties to a simple contract intended to bind not only themselves, but their personal representatives; and such parties may sue on a contract, although not named therein. Hence, as we have seen, executors, though not named in a contract, are liable, so far as they have assets, for the breach of a contract which was broken in the lifetime of their testator. And if the contract was not broken in his lifetime, they must not break it, but will be held to its performance, unless this presumption is overcome by the nature of the contract; as where the thing to be done required the personal skill of the testator himself. So, too, if several persons stipulate for the performance of any act, without words of severalty, the presumption of law is here that they intended to bind themselves jointly. But this presumption also might be rebutted by the nature of the work to be done, if it were certain that separate things were to be done by separate parties, who could not join in the work.

It is also a legal presumption that every grant carries with it whatever is essential to the use and enjoyment of the grant. But this rule applies more strongly to grants of real estate than to transfers of personal property. Thus, if land be granted to another, a right of way to the land will go with the grant.

Where anything is to be done, as goods to be delivered, or the like, and no time is specified in the contract, it is then presumption of law that the parties intended and agreed tha the thing should be done in a reasonable time. But what is a reasonable time is a question of law for the court. They will consider all the facts and circumstances of the case in determining this, and if any facts bearing upon this point are in question it will be the province of the jury to settle those facts, although the influence of the facts when they are ascertained, upon the question of reasonableness of time, remains to be determined by the court.

SECTION IV.

OF THE EFFECT OF CUSTOM OR USAGE.

WE have already had occasion to remark, that a custom which may be regarded as appropriate to the contract and comprehended by it, has often very great influence in the construction of its language. The general reason of this is obvious enough. If parties enter into a contract, by virtue whereof something is to be done by one or both, and this thing is often done in their neighborhood, or by persons of like occupation with themselves, and is always done in a certain way, it must be supposed that they intended it should be done in that way. The reason for this supposition is nearly the same as that for supposing that the common language which they use is to be taken in its common meaning. And the rule that the meaning and intent of the parties govern, wherever this is possible, comes in and operates. Hence an established custom may add to a contract stipulations not contained in it; on the ground that the parties may be supposed to have had these stipulations in their minds as a part of their agreement, when they put upon paper or expressed in words the other part of it. So custom may control and vary the meaning of words; giving even to such words as those of number a sense entirely different from that which they commonly bear, and which indeed by the rules of language, and in ordinary cases, would be expressed by another word.

This influence of custom was first admitted in reference to mercantile contracts. And indeed almost the whole of the law-merchant, if it has not grown out of custom sanctioned by courts and thus made law, has been very greatly modified in that way. For illustration of this, we may refer to the law of bills and notes, insurance, and contracts of shipping generally. And although doubts have been expressed whether it was wise or safe to permit express contracts to be controlled, or, if not controlled, affected by custom in the degree in which it seems now to be established that they may be, this operation of custom is now fixed by law, and extended to a vast variety of contracts; and indeed to all to which its privileges properly apply. And qualified and guarded as it is, it seems to be no more than reasonable. In fact, it may be doubted whether a large portion of the common law of England and of this country rests upon any other basis than that of custom. The theory has been held, that the actual foundation of most ancient usages was statute law, which the lapse of time has hidden out of sight. This is not very probable as a fact. The common law is every day adopting as rules and principles the mere usages of the community, or of those classes of the community who are most conversant with the matters to which these rules relate; and it is certain that a large proportion of the existing law first acquired force in this way.

Other facts must be considered; as how far the meaning sought to be put on the words departs from their common meaning as given by the dictionary, or by general use, and whether other makers of this article used these words in various senses, or used other words to express the alleged meaning. Because the main question is always this: Can it be said that both parties ought to have used these words in this sense, and that each party had good reason to believe that the other party so understood them?

Custom and usage are very often spoken of as if they were the same thing. But this is a mistake. Custom is the thing to be proved, and usage is the evidence of the custom. Whether a custom exists is a question of fact. But in the proof of this fact questions of law of two kinds may arise. One, whether the evidence is admissible, which is to be settled by the common principles of the law of evidence. The other, whether the facts stated are legally sufficient to prove a custom. If one man testified that he had done a certain thing once, and had heard that his neighbor had done it once, this evidence would not be given to the jury for them to draw from it the inference of custom if they saw fit, because it would be legally insufficient. But if many men testified to a uniform usage within their knowledge, and were uncontradicted, the court would say whether this usage was sufficient in quantity and quality to establish a custom, and if they deemed it to be so, would instruct the jury, that, if they believed the witnesses, the custom was proved. The cases on this subject are numerous. But no definite rule as to the proof of custom can be drawn from them, other than that derivable from the reason on which the legal operation of custom rests; namely, that the parties must be supposed to have contracted with reference to it.

As a general rule, the knowledge of a custom must be brought home to a party who is to be affected by it. But if it be shown that the custom is ancient, very general and well known, it will often be a presumption of law that the party had knowledge of it; although, if the custom appeared to be more recent, and less generally known, it might be necessary to establish by independent proof the knowledge of this custom by the party. One of the most common grounds for inferring knowledge in the parties, is the fact of their previous similar dealings with each other. The custom might be so perfectly ascertained and universal, that the party's actual ignorance could not be given in proof, nor assist him in resisting a custom. If one sold goods, and the buyer being sued for the price, defended on the ground of a custom of three months' credit, the jury might be instructed that the defence was not made out unless they could not only infer from the evidence the existence of the custom, but a knowledge of it by the plaintiff. But if the buyer had given a negotiable note at three months, no ignorance of the seller would enable him to demand payment without grace, even where the days of grace were not given by statute. In such a case, the reason of the law of custom—that the parties contracted with reference to it—seems to be lost sight of. But in fact the custom in such a case has the force of law; an ignorance of which cannot be supposed, and, if it be proved, it neither excuses any one, nor enlarges his rights.

No custom can be proved, or permitted to influence the construction of a contract, or vary the rights of parties, if the custom itself be illegal. For this would be to permit parties to break the law because others had broken it, and then to found the rights upon their own wrong-doing.

Neither would courts sanction a custom by permitting its operation upon the rights of parties, which was in itself wholly unreasonable. In relation to a law, properly enacted, this inquiry cannot be made in a country where the judicial and legislative powers are properly separated. But in reference to custom, which is a *quasi* law, and has often the effect of law, but has not its obligatory power over the court, the character of the custom will be considered; and if it be altogether foolish, or mischievous, the court will not regard it; and if a contract exist which only such a custom can give effect to, the contract itself will be declared void.

Lastly, it must be remembered that no custom, however universal, or old, or known, unless it has actually passed into law, has any force over parties against their will. Hence, in the interpretation of contracts, it is an established rule, that no custom can be admitted which the parties have seen fit expressly to exclude. Thus, to refer again to the custom of allowing grace on bills and notes on time, there is no doubt that the parties may agree to waive this; and even the statutes which have made this custom law, permit this waiver. And not only is a custom inadmissible which the parties have expressly excluded, but it is equally so if the parties have excluded it by a necessary implication; as by providing that the thing which the custom affects shall be done in a different way. For a custom can no more be set up against the clear intention of the parties than against their express agreement; and no usage can be incorporated into a contract which is inconsistent with the terms of the contract.

Where the terms of a contract are plain, usage, even under that very contract, cannot be permitted to affect materially the construction to be placed upon it; but when it is ambiguous, a long-continued usage may influence the judgment of the court, by showing how the contract was understood by the parties to it.

SECTION V.

OF THE ADMISSIBILITY OF EXTRINSIC EVIDENCE IN THE INTERPRETATION OF WRITTEN CONTRACTS.

It is very common for parties to offer evidence external to the contract in aid of the interpretation of its language. The general rule is, that such evidence cannot be admitted to contradict or vary the terms of a valid written contract; or, as the rule is expressed by writers on the Scotch law, "writing cannot be cut down or taken away by the testimony of witnesses." The rule is often expressed with sufficient exactness for ordinary purposes, in this way: "Evidence may be admitted to explain a written contract, but not to contradict it." There are many reasons for this rule. One is, the general preference of the law for written evidence over unwritten; or, in other words, for the more definite and certain evidence over that which is less so; a preference which not only makes written evidence better than unwritten, but classifies that which is written. For if a negotiation be conducted in writing, and even if there be a distinct proposition in a letter, and a distinct assent, making a contract, and then the parties reduce this contract to writing, and both execute the instrument, this instrument controls the letters, and they are not permitted to vary the force and effect of the instrument, although they may sometimes be of use in explaining its terms. Another is, the same desire to prevent fraud which gave rise to the statute of frauds; for as that statute requires that certain contracts shall be in writing, so this rule refuses to permit contracts which are in writing to be controlled by merely oral evidence. But the principal cause alleged in the books and cases is, that when parties, after whatever conversation or preparation, at last reduce their agreement to writing, this may be looked upon as the final consummation of their negotiation, and the exact expression of their purpose. And all of their earlier agreements, though apparently made while it all lay in conversation, which is not now incorporated into their written contract, may be considered as intentionally rejected. The parties write the contract when they are ready to do so, for the very purpose of including all that they have finally agreed upon, and excluding everything else, and making this certain and permanent. And if every written contract were held subject to enlargement, or other alteration, according to the testimony which might be offered on one side or the other as to previous intention, or collateral facts, it would obviously be of no use to reduce a contract to writing, or to attempt to give it certainty and fixedness in any way.

It is nevertheless certain, that some evidence from without must be admissible in the explanation or interpretation of every contract. If the agreement be, that one party shall convey to the other, for a certain price, a certain parcel of land, it is only by extrinsic evidence that the persons can be identified who claim or are alleged to be parties, and that the parcel of land can be ascertained. It may be described by bounds, but the question then comes, where are the streets, or roads, or neighbors, or monuments referred to in the description ; and it may sometimes happen that much evidence is necessary to identify these persons or things. Hence, we may say, as the general rule, that as to the *parties* or the *subject-matter* of a contract, extrinsic evidence may and must be received and used to make them certain, if necessary for that purpose. But as to the terms, conditions, and limitations of the agreement, the written contract must speak exclusively for itself. Hence, too, a false description of person or thing has no effect in defeating a contract, if the error can be distinctly shown and perfectly corrected, by other matter in the instrument.

A written contract, of which the memorandum satisfies the statute of frauds, is open to evidence to show that certain essentials of the actual contract are not in the memorandum, if the effect of the evidence is, not to vary the written contract, but to show that no such contract was ever made.

Recitals in an instrument may sometimes be qualified or contradicted by extrinsic evidence ; by "recitals" are meant the narrative of the circumstances or purposes which have induced the parties to make the contract. So the date of an instrument, or if there be no date, the time when it was to take effect, which may be other than the day of delivery ; or the amount of the consideration paid, may be varied by testimony ; but if a note given for land is sued, the promisor cannot show in defence that the deed described a less quantity of land than had been stipulated. And an instrument may be shown to be void and without legal existence or efficacy, as for want of consideration, or for fraud, or duress, or any incapacity of the parties, or any illegality in the agreement. In the same way, extrinsic evidence may show a total discharge of the obligations of the con tract; or a new agreement substituted for the former, which it sets aside; or that the time when, or the place where, certain things were to be done, had been changed by the parties; or that a new contract, which was additional and supplementary to the original contract, had been made, or that damages had been waived, or that a new consideration, in addition to the one mentioned, has been given, if it be not adverse to that named in the deed. And if no consideration be named, one may be proved.

We have already said that a receipt for money is peculiarly open to evidence. It is only *primâ facie* evidence either that the sum stated has been paid, or that any sum whatever was paid. It is in fact not regarded as a contract, and hardly as an instrument at all, and has but little more force than the oral admission of the party receiving. But this is true only of a simple receipt. It often happens that a paper which contains a receipt, or recites the receiving of money or of goods, contains also terms, conditions, and agreements, or assignments. Such an instrument, as to everything but the receipt, is no more to be affected by extrinsic evidence than if it did not contain the receipt; but as to the receipt itself, it may be varied or contradicted by extrinsic testimony, in the same manner as if it contained nothing else.

Lastly, no contract will be enforced, as a contract, if it have no plain and natural or legal meaning, by itself; and if admissible, extrinsic evidence can only show that the intention of the parties was one which their words do not express. But the supposed contract being set aside for such reasons as these, the parties will be remitted to their original rights and obligations.

CHAPTER XLII.

LEGAL RIGHTS AND OBLIGATIONS OF FARMERS.

SECTION I.

HIS TITLE TO HIS FARM.

This right may arise from and rest upon possession, inheritance, purchase, or hiring.

1. Possession.—If the farmer or they from whom he inherits have possessed the land without disturbance or adverse claim for a sufficient number of years, it is his by what is called prescription. The meaning of this is, that the law does not allow any adverse claimant to set up an old and stale claim to the farm, and on the strength of it deprive a man of property which he has held in peace for a long period. This law was founded upon the probability that they who have held quiet possession of land for a long time must have held it by right; and that no one would be likely to lie by and make no claim to the land if he had a good title to it. Ages ago, the period required to give title by mere lapse of time was a very long one. Gradually it became shorter, and is now in this country quite short. Exceptions to the rule are always made in favor of those who by reason of absence, infancy, or imbecility have been unable to assert their claims—the principle being that no one should lose his land by suffering another to possess it quietly for a long time but he who could have made claim, and was therefore properly punished for his neglect.

In Chapter 22, on limitations, and in the abstract of the statutes of limitations, beginning on page 284, the reader will find stated the periods of time within which, in the several States, an action must be brought to recover real estate—that is, land. If brought afterwards, the lapse of time is a sufficient defense, unless the plaintiff who seeks to recover the land can justify his delay in bringing his suit by showing that he or she was an infant, or absent from the State, or imbecile, or a married woman, or under some other disability; and that he or she brought his or her action within the prescribed period, if that began after his disability was removed.

2. INHERITANCE.—In this country there is not only an entire absence of the right of primogeniture, but no other difference between the inheritance of real estate or land, and of personal property in goods and chattels, than that which arises necessarily from the difference in the nature of these two kinds of property. We retain, generally, the phraseology of the English law. The word "inheritance" applies in law only to real property, and the statutes by which it is determined how such property passes to the issue or relatives of the deceased, are commonly called statutes of inheritance. Whereas those which determine how and where the personal property shall go are called statutes of distribution. But in all the States these two statutes are nearly alike; that is to say, the persons entitled to the real estate of a deceased man are almost always those to whom the personal property would go as to the next of kin to the deceased.

A person who takes a farm by inheritance (using the word in its common meaning), must take it either under the will of the deceased, or by force of law as the heir of the deceased. On this subject we refer to what we have said in our chapters on wills and on executors and administrators.

3. PURCHASE.—In this country land can only be transferred by DEEDS.

If a man makes a bargain to buy a farm and is so unwise as to take possession without having a sufficient deed duly executed, his bargain gives him no title to his farm, which still remains the property of the man who agreed to sell it. But if the bargain be in writing and sufficiently distinct, the law may help him and compel the owner to carry his bargain into effect by giving a sufficient deed.

The wiser way, if for any reason the parties are not ready to give and receive a deed, is for the intended buyer to take from the intended seller a bond for a deed, of which he will find several forms. See forms 27, 28, and 29, in this book.

For offers made on time, see the third section of the sixth chapter.

For the law of deeds we refer to our chapter on deeds. In that chapter will also be found what it is most important to know, remember, and practice—that is the legal requirements concerning the signing, sealing, acknowledgment, delivery, and recording of deeds. Ignorance or neglect of any of these matters may destroy a man's title to his farm and deprive him of it.

It is now so common to sell a farm at auction that it is well to give some of the rules of law about sales at auction.

4. SALES OF LAND AT AUCTION.—Every bid by any one present is an offer by him. It may be withdrawn before the hammer falls; but if not withdrawn, then the offer is accepted and the bargain made.

If a farm be sold the plan or description offered at the sale must give true information, or the purchaser is not bound to take the estate. If the descriptions are written or printed and circulated among the bidders, they cannot be contradicted by verbal declarations made by the auctioneer at the time of the sale.

If land is sold in several lots, and each is bought by itself, there is a separate bargain for each lot; and therefore if the seller can make good title to only one or more of the lots, the buyer must take them though he cannot have the other lots he bought; unless he can show that the buying of the whole was a valid part of the inducement or motive for buying any, and that the part he could have would not answer his purpose unless he could have the other lots.

Whether by-bidders for the seller authorize a purchaser to abandon a sale has been much disputed. Of course any fraudulent act of the seller would have that effect; but it seems to be law that by-bidding is not necessarily fraudulent, if the seller wishes only to avoid sacrifice. But the honest way would be to put the land up at a price. And if the seller or auctioneer declares at the sale that there is no by-bidding, or makes any declaration to that effect, and then employs by-bidding, the buyer is not bound to take the land.

An agreement among many persons that one should bid for all is not necessarily illegal.

An auctioneer of real or personal property who does not give the name of the owner is himself liable to the buyer for the completion of the sale, and for any warranty he makes; and so he is if he sold and warranted without authority. But if he has authority from the owner and states who the owner is, he puts the liability for the sale and the warranty upon the owner.

SECTION II.

WHAT ONE TAKES BY THE DEED OF A FARM.

1. BOUNDARIES AND DESCRIPTIONS.—The first question is what land does he take; and this question is answered by the boundaries. These cannot be stated too carefully, and cases where difficulties and law-suits have arisen from their inaccuracy or insufficiency are very frequent.

One rule to be remembered is, that evidence of what the parties meant and intended cannot be used to contradict what they have said in writing. See page 74. This rule sometimes works great injustice; but the reason of it is obvious, for if, after parties had agreed upon a matter, and put it in writing in the most formal manner, either of them could put the writing aside by evidence that he meant something else, nobody would be safe in his contracts or secure in his rights.

But evidence is receivable to show that either of the parties used language to defraud the other; for fraud can always be exposed, and whenever shown gives the defrauded party the right to avoid the contract. Words and conversation about the farm amount to nothing in law.

The intending seller may say how much stock it will feed, or what crops it will produce, and if he deceives the buyer this man has no remedy, for he must judge of these matters for himself, or get disinterested advice. But if he should state falsely and fraudulently that the farm had in fact fed so much stock or produced such crops, the deceived buyer would have his remedy, and could avoid the sale if he thought fit.

Evidence is always admissible to show what the contract or instrument means, as who the parties are, or where the farm or land is. The rule is, that evidence cannot *contradict* but may *explain* a written contract. If a deed says John Smith sells the land, evidence cannot show that it was Peter Robinson; but if there be John Smith the father and John Smith the son, it can show which of them is meant.

So the boundaries may be obscure or uncertain; and while evidence cannot put new boundaries into a deed, it may make those which are there certain. So boundaries may be inconsistent. The farm may be said to contain so many acres, and to measure five hundred rods from such a boundary to such a boundary in a northwest direction. But there may be no boundary in that direction, and the distance from one bound to the other may be four hundred and six hundred rods, in a north-northwest direction, and the farm may contain more or fewer acres than the description. In such a case evidence may show, if it can with reasonable certainty, just what the bounds actually are, as certain trees, or posts, or rocks. And if the boundaries are made certain they will control distances, directions, and contents, unless the discrepancies are so great as to show either fraud on one part or the other, or that the parties labored under some mistake, and could not have *agreed in their minds* one to sell and the other to buy the same farm; for this agreement of minds is in law the very essence of a contract.

If the number of acres enters into the description, it is common to add, "be the same more or less." This guards effectually against any inaccuracy. But without it, the failure in the number of acres would not avoid the deed, unless it was so large as, with other circumstances, to show fraud. If there be ever so much fraud, the fraudulent party cannot take advantage of it, and only the defrauded party can. If the seller says the farm contains so many acres when he knows it does not, and then points out the boundaries accurately and truly, the buyer is without redress, because he has the means of correcting the misrepresentation.

2. CONTENTS.—The rule of law is, and for many centuries has been, that whosoever owns land owns all there is above it and all there is below it; or as the old phrase ran, everything up to the sky and everything down to the center.

Of course all buildings and everything fairly belonging to the buildings go with the farm. But then comes the question, what does belong to them? The answer is given by the rules of law as to fixtures.

3. FIXTURES.—They are everything which is fixed or fastened to the land. And if anything be fastened to the land, whatever is fastened to that thing is fastened to the land. Thus: A house rests on a stone foundation sunk into the ground; but the doors and windows of the house are fastened to the house, and therefore they are fastened to the land; and the blinds belonging to the windows and the locks and keys to the door, though moveable and for the time removed from them, and some other things of like kind not fastened to the house, are fixtures, and go with the house as that goes with the land. The cases are almost innumerable which have risen upon the question whether this or that thing is a fixture. Before attempting to show how this question has been answered, it may be well to state that many things are fixtures when a house is sold, so that the seller of the house cannot retain them, which would not be fixtures to the hirer of the house if he put them in; and when his lease expired he could, therefore, take them away with him.

In general, whatever the owner of the farm fastens to the ground or to a building, or uses constantly with it as an appurtenance to it, is a fixture, and he sells it when he sells the farm. But whatever a hirer buys or makes to use with the farm, and fastens to the ground or building, if he fastens it in such a way that he can remove it and leave the land or building in as good order and condition as before, he may remove and take away.

Of course the parties, whether buyer or seller, or hirer or lessor, may make what bargains they like about any fixture. The law of fixtures comes in only where they make no bargain.

A. *Things held not to be removable by an outgoing tenant.*—Barns and sheds fixed in the ground, statues erected on a permanent foundation as an ornament to the ground, chimney-piece not ornamental if it be fastened to the wall, closets affixed to the house, conservatory substantially affixed, fuel-house, hearths, hedges, pigeon-house, pump-house, wagon-house, box-borders not belonging to a gardener by trade, fruit trees not belonging to a nurseryman. These last two illustrate a rule of much force and frequent application, namely: that a tenant of land which he hires to carry on a business there may add things as a part of his business and take them away, which things he would be obliged to leave if they were not connected with his business.

B. *Things held to be removable by an outgoing tenant.*—Barns, stables, out-houses and sheds resting on logs or rollers, because this showed them to be affixed to the land only temporarily. Ornamental chimney-pieces, fire-frame, furnaces, cooking stove, gates, looking-glasses, trade fixtures generally.

There are two rules to be remembered, of almost universal force. One is that the outgoing tenant who has attached to the land or placed upon the premises anything which he cannot remove and leave the buildings or the land in as good condition as before, must leave that thing behind him.

The other is that an owner of land who attaches to his land or building almost any of the things which a tenant may remove, when he sells the land or building sells that thing, unless he expressly reserves a right to remove it.

4. MANURE.—If a man sells his farm he sells with the farm all the manure upon it, whether it be spread on the fields or is heaped up in the barn-yard or cellar.

If he lets his farm to another, the hirer takes the manure, unless the lessor reserves the right to take it away, and when the lease expires and the land returns to the owner, the manure goes with the land.

The owner of a farm may undoubtedly, before he sells it, remove the manure or sell it separately, if he does this openly and not secretly, and not in such a way as to deceive and cheat the buyer of the farm. What the right of the outgoing tenant is may not be so certain. But it may now be considered as the law of this country that a tenant who has occupied a farm on a lease, and whose lease is about to expire, cannot sell or remove the manure, but it goes with the farm to the owner.

5. ROCKS, STONES, SOIL.—These belong wholly to the owner of the land, and whoever buys it buys an absolute right to them. No man can take away a pebble or a spoonful of earth without a breach of the law. This is obvious, for if a man could take one spoonful he could take many, and that might be a cartload

And if he might take a pebble, he might take the rocks. These must belong to the owner of the land.

6. Adjoining Roads.—If one's farm is bounded by a road, and there are no restrictions or reservations in the deeds through which he derives title, he owns to the middle of the road, subject only to the right of the public to use it as a road, or, as it is called, their right of way; subject also to whatever rights the law of the State gives to surveyors of roads and highways, or other officers. Thus, he owns the grass on the road, and may take stone or gravel from the road as freely as from any part of the farm, provided he fills the vacant places with equally good road material and leaves the road in as good condition as before.

When the owner of a farm owns to the middle of the adjoining road he has all the rights to the land consistent with the public right of way. He may plant trees on the sidewalk if permitted by proper authority, or unless they obstruct the use of the road, and they remain his property. Officers charged with the care of roads may remove them, but individuals are liable for their wanton destruction. If one fastens his horse to the trees, and the horse injures the trees, the man who tied him there is liable.

The owner of a farm cannot put any permanent structure on an adjoining road, nor keep his carts and sleds there nor pile his wood there, and if he does he is liable to anyone who suffers an injury from running against them while traveling over the highway.

7. Trees.—Of course the owner of a farm buys and owns all the trees upon it if at the time of the sale they were blown down and lie on the ground, but not if they have been cut for sale or fuel. There have been some cases in courts turning upon the question what are his rights if his trees hang over his neighbor's fields, and what are his neighbor's rights.

In the first place his neighbor owns *his* land absolutely, and all that is above and below it. Therefore he may cut away every bough and twig which comes over his land. And he may dig down close to the line of his land and cut away every root that comes into his land. But how is it as to the fruit which grows upon their branches? This fruit, like the branches themselves, belongs to the owner of the tree. His neighbor may cut the branches away, and they may fall on his ground, but he has no right to them. The original owner loses no property in them, but has a right to enter peaceably upon the land where they lie and take the fallen boughs away. So he retains his property in the fruit, and may enter upon the land where it lies, and gather it and take it away. Such, we think, are the conclusions to be derived from the best adjudication and the best reasoning on the subject.

SECTION III.

TRESPASSING ON THE FARM.

1. WHO IS A TRESPASSER.—The right of an owner of a farm to its entire possession is so absolute in law that nobody can set foot upon it, by day or night, against the owner's will, without committing what the law calls a trespass, or a breach of the law for which he is answerable. A man's house, says the old maxim, is his castle, as effectually protected by the law as a castle by its walls and battlements. If a stranger goes at proper hours only upon the roads and paths of the farm, although they are not public, they are so far open that one who walks on them without evil design and without doing harm, and without express prohibition of some kind, would be held to have in some sort the owner's permission. But one who walks on the grass, or perhaps anywhere but on the roads or paths, is a trespasser, if without express permission.

2. OF THE RIGHT OF THE FARMER TO ORDER A TRESPASSER OFF FROM HIS LAND. His right to do this is unquestionable. But suppose that he gives such an order and the trespasser will not go. What can the farmer do? Then the owner of the farm, or of any lot of land, however small, has an equally unquestionable right to put him off forcibly if the trespasser will not go peaceably. But how much force may the owner use? The answer to this question is distinct and certain so far as the law goes, but there may be some difficulty in the actual application of the rule. The rule of law is, that the owner of the land may, in order to expell the trespasser, "put his hands gently upon him." But then the question comes

what is "gently." This question has been through English courts for centuries. They have come to a conclusion which the American courts generally adopt. This conclusion is that the owner may use whatever force is necessary to expel the trespasser, provided on the one hand that he does him no grievous bodily injury, and on the other that he uses no more force than the trespasser makes necessary.

For example: A goes into B's house, or barn, or on his land, and persists in remaining there, although B orders him away. B may lay hold of him, may summon help, and with as much help as he needs seize him, and if need be bind him hand and foot, carry him bodily off his premises, and then unbind him. Always on this condition, that he uses no more violence than is requisite to remove him, and that he avoids such measures as would do serious or permanent harm or endanger life or limb. But while B does only what is needed to remove A, and does this with sufficient care, if A by some accident is injured, B is not responsible, for it is A's own fault.

SECTION IV.

FARM-WAYS.

Of course an owner of a farm may make or unmake his own roads or ways at his pleasure. His neighbor has nothing to do with them, unless the owner give him leave to use them, and a right of way must be conveyed by a deed, in like manner as the land itself. If, indeed, his neighbor claims a right to use one of them, and under that claim uses it as he would his own for more than twenty years without the permission of the owner, such neighbor might acquire a right of way by prescription. And if such rights of way become attached to a farm by prescription, whoever buys a farm buys with it those rights of way. But such a case would not often occur.

If a farmer sells a lot surrounded by the farm, he sells with it a right to pass to and from the lot. But the seller may mark out a sufficient passage to and from the land, and over that the buyer must go. And when a public highway is laid out which gives access to the lot, the buyer of it loses his right of passage over the seller's land, because this right is no longer necessary to his use and occupation of the lot.

SECTION V.

WATER RIGHTS.

The owner of a farm owns the ponds upon his farm and the running streams, so far as to make a reasonable use of them for his land, stock, or house. He may change the course of a stream on his own land, but he must not divert it from his neighbor's land, nor can he lead it into his neighbor's land elsewhere than in its natural channel. He may dam it up so as to make ponds on his own land, but cannot overflow his neighbor's land except for mill purposes under the local laws regulating such use of the water. If he does, his neighbor may enter his farm and remove the dam so far as to relieve his land from the overflow ; and if the stream be obstructed by stones or rubbish on his neighbor's farm, he may go on his neighbor's land to remove the obstruction, and may put this on the banks of the stream. He may dig anywhere on his own land, even if he cuts off the springs which water his neighbor's land or supply his well or pond, for his neighbor has no property or legal interest in the waters which flow or stand below the surface of the land.

As the owner of a farm owns a stream or brook which runs through his farm, so if a farm bounds on a running stream that is not navigable he owns to what is called the *thread* of the stream, which is the middle of the main current, and may be on one side or the other of the middle of the stream.

SECTION VI.

FIRE.

There is a principle of law applicable in a reasonable way to everyone, and to the ownership and use of all property. It is this : "A man must use what is his own so as not to injure his neighbor." This rule applies distinctly to a man's right to kindle fire on his land. A man who owns any land, much or little, may kindle what fire he will upon it and burn what he will in the fire. But he is always responsible for the damage his fire does if he were negligent in any way about it. It may be that his neighbor's fences or buildings are so near him that he could not build a fire upon any part of his land without endangering his neighbor's property. Then it might be negligent in him to build a fire to burn brush anywhere, or he may build it of particularly inflammable and therefore dangerous material, or in a very dry time, or in a high wind, or too large a fire, or without watching it with the care that such a fire required to be reasonably safe. If he were sued for the damage it would be for a jury to determine, under the direction of the court as to the law, whether he was liable, and if so for how much. The court would instruct the jury that the builder of the fire was not liable if he built it on his own land, unless there were circumstances of some kind which satisfied them that he had been in some way negligent, and that the damage was directly due to his negligence. Then would come the question, which is often very difficult because it must be answered by a well established rule, applicable not only to fire but in a great variety of cases, but which it is often very difficult to apply. This rule is that a wrong doer is always answerable for all the *immediate* or *direct* effects of his wrong-doing, but not further. If we apply this rule to a case of fire, the man who built one or tended one negligently would be answerable to his neighbor not only for a shed that caught, but for his dwelling-house, though that stood at some distance, if it caught fire from the shed. But he would not be answerable to a more distant person whose house caught fire from the first house. The reason of the rule is obvious. If the builder of the fire were answerable for the second house, why not for the third which caught from the second, and why not for a whole city? It is plain that there must be some limit to a wrong-doer's liability for the consequences of his wrong-doing. It must stop somewhere. If the man whose house or store is burned down becomes thereby insolvent, no one would say that the man who set the fire, however willfully or negligently, should be answerable to this insolvent's creditors for what they lose by him. As this man's liability must stop somewhere, the law says it stops with the direct and immediate consequences of his wrong-doing, leaving it to a court and jury to determine what damages were direct and immediate, and what were only remote and consequential.

Farm buildings are sometimes destroyed by fire caught from railroad cars. The railroad companies are of course liable for all damage caused thereby if the fire arose from any fault of theirs or of persons employed by them. It would be the fault of the companies if they neglected to use known and entirely practicable precautions. Whether they would be answerable if wholly free from negligence and default cannot be answered from any ascertained and uniform law. Generally we think they would be answerable. In some States this is provided by statute.

SECTION VII.

GAME ANIMALS.

We have in this country no game laws but such as are intended to preserve from wasteful destruction animals valuable for food or otherwise useful. It is a pity we have not more laws for this purpose, and that they are not better observed. Game animals which existed in great abundance almost everywhere in this country some years ago are now scarce everywhere, and in some regions destroyed, by the indiscriminate slaughter which has long prevailed.

A wild animal, whether beast, bird, or fish, belongs to nobody, and everyone may catch or kill it who can. But here again comes this question of the right to go upon the land. The wild birds on my farm are not mine. I have no better right to shoot or snare them than another. But no man has any more right to come on my land without my permission, to snare or shoot them, than for any other purpose. That is to say, he has no right at all. If a man stands in a road adjoining my farm and shoots a bird which is coming on my land I cannot say that he does me any wrong. But if the bird falls over the line he has no right to step a foot on my land to get the bird, and if he does so he is a trespasser.

It is common in some parts of our country to see signboards set up on the roadside, giving notice "no shooting allowed on these premises." The only practical meaning or effect of such notices is, that while one who walks peacefully over the land will not be prosecuted, one who shoots upon the land will be. But he cannot be prosecuted for shooting there or for killing wild animals there, but for being there without leave, that is, for trespassing on the land. So the owner of the farm does not own the fish in his ponds or streams until he catches them, but no stranger has any right to come over his land to his grounds. If such ponds or streams reach a highway any man may stand in the highway and fish for them.

An animal that was originally wild, after it is caught and tamed is, with its progeny, as much property as a domestic animal.

SECTION VIII.

DOMESTIC ANIMALS.

They are as much the property of their owner as anything else which he owns. A farmer has certain rights to them and certain liabilities for them.

No one has a right to kill or injure them. If his neighbor's cattle trespass on his land he may *impound them*, being very careful to follow exactly the requirements of the law, for his ignorance or carelessness here may get him into trouble. Perhaps the difficulty or danger of making use of a remedy which may so easily be mistaken is one cause why impounding is not now so often resorted to as formerly. But the farmer whose land cattle trespass on may turn them into the road to go where they will. A kind regard for his neighbor would prompt him to give his neighbor such information as would enable him to recover his cattle, unless, indeed, they were notoriously breachy and their owner had been warned often enough. But one who turns them from his own land into the road is not bound to give this notice. For everyone who owns cattle is bound to keep them at home or suffer the consequences.

So it would be as to sheep, goats, swine, etc. As to hens, they cannot be impounded. Of course they can be driven away, but they must not be shot, even if their dead bodies were returned to their owners. It may be doubted, however, whether a jury—who determine all questions of damages in actions of trespass—would give much damage if their owner, who was in the habit of letting them get their food in his neighbor's garden, brought an action when their dead bodies were brought to him.

The owner of domestic animals is liable for any damage they cause, and one whose fields they break into may sue for the harm they do.

If he turns his oxen or other animals loose into the public highway, and there they injure anyone in person or property, he is answerable. Nor is it any defense that he did not know that they were particularly dangerous in disposition, nor is it any defense that the animals were not so, because he ought to have kept them at home.

Whether this applies to hens the law has not said that we know of, but it has said so very decidedly as to all four-footed animals, including one of the most troublesome—dogs. As to other animals it is a general rule that the owner of an animal that is kept at home and there injures a person, is not liable unless it can be shown that he had good reason to know that his animal was mischievous and should be kept in such a way that he would be harmless. But all dogs are mischievous by their very nature and their owner is liable for any injury they do and its direct consequences. Anyone may kill any dog who runs at him in the public highway or on his own land in a threatening way, or if he is wounding or chasing cattle or sheep in his own pastures. In States requiring that dogs should be licensed, if they are not licensed they are outlawed, and may be killed anywhere by any person who is where he has a right to be.

SECTION IX.

SALE WITH WARRANTY OF ANIMALS, OF SEEDS, AND OF FERTILIZERS.

In our chapter on sales, section 4, we treat of sales with warranty. We would add here some statements of the law which have an especial reference to farmers.

1. OF ANIMALS.—Farmers often buy and often sell animals, and it is important to know when the sale is with warranty and when it is not. This is sometimes a difficult question. If the word warranty is used there is no question. But this word is not essential, and if it is not used there may still be a question whether there is a warranty. There is one rule stated in our chapter on sales of frequent importance. It is that if any thing be bought for a special purpose and this purpose is made known to the seller, it is considered in law

that the thing is sold with a warranty that it is fit for that purpose. This rule has been applied to the sale of a horse without express warranty.

Mere statements or declarations in circulars or advertisements, or those made in the course of conversation, would not amount to a warranty even if the buyer relied upon them and was deceived by them. But the law seeks to check the fraud which is often perpetrated in this way by the rule that, if the representations were made in the negotiation for the sale and formed a part of it, if they were intended to cause the sale and did help to cause it, then these representations would be a warranty in law with all the effects of a warranty, even if the seller made them honestly.

The warranty may be limited either as to its application or as to time. For example, a horse may be sold with warranty against lameness or against glanders, and then there would be no warranty against anything else. Or he may be sold with warranty to last only twenty-four hours, as is frequently said at sales of horses by auction. Then the horse must be returned for unsoundness or any other defect, or a claim be made for a breach of warranty within twenty-four hours after the sale.

2. OF SEEDS.—Not only farmers but everyone who has a lot of ground no bigger than a table-cloth, or even a dozen flower pots in which he tries to grow flowers or fruit, knows what an annoyance it is to find the seeds he bought and sowed different from what they were bought for, or lifeless or worthless, and that season's cultivation lost. Only a farmer knows the extent of the loss which he may suffer from this cause. And here the law comes to his aid, and if farmers generally knew the remedy in their power and applied it generally, it might be hoped that this fraud might be lessened or punished. The rule that anything sold for a special purpose is sold with a warranty that it is fit for that purpose applies here. And it has been decided in some of our States, and we think would now be in all of them, that if a buyer asks a seller for seed of a particular sort or variety and he sells him seed as good seed of that particular sort or variety, and it turns out to be not of that sort or variety but of some other, or dead and worthless, the seller

is liable to the buyer not merely to the extent of the price paid for the seed, but for all the direct damage which he may have suffered therefrom, as the cost of preparing the field for the seed or the difference in value between the crop which he raised and the crop which would, with reasonable probability, have been raised upon the field if the seed sown had been what it was sold for. And the seller will be thus liable without any express warranty, even if he had been honest and had bought the seed as that which he sold it for, and believed it to be that, and the fraud or mistake was not his own but the man's from whom he bought it.

We have no doubt this rule would be applied in the same way where one who bought young grafted fruit-trees as of a particular variety, and they were sold expressly as such, was deceived and injured in a similar way.

3. Of Fertilizers.—A great deal of fraud has been practiced in the sale of fertilizers. This is now much diminished by the better knowledge of the subject possessed by farmers and gardeners, and also by the laws of some of the States. It would always be safer for the buyer to insist on a warranty. But this should not be a warranty of the general quality and character of the article, for such a warranty would be of little practical use except in extreme cases. The warranty should be as to the ingredients of which the article consists, and as to the percentage quantity of these. If it be a chemical fertilizer this is easily ascertained by a chemist. The most essential of these ingredients are phosphorus, nitrogen, and potash. These elements exist in artificial fertilizers under different forms. When the amount of each of them in a hundred weight of the article is known to the buyer, it is easy for him to acquire the knowledge necessary to judge of the efficacy and value of the fertilizer.

SECTION X.

HIRING OF HELP.

1. Rights and Duties of Help.—In England the law of master and servant some generations ago was strict, nor has it lost all this character yet. Our fathers brought over to this country much of this law, but it has entirely lost all its force in all our

States. Now the relation of the hirer and the hired is purely one of contract. The hired man agrees to sell so much of his time, labor, or skill to the hirer, and the hirer agrees to pay so much money for what he buys. It is a contract of help and of payment for help, and both parties are held to their contract, and neither beyond it.

In the first place, both parties may make just such a bargain as they like. They may make a complete bargain concerning all items, or a partial one, or none at all.

In the next place, if a man works for a farmer with a partial bargain, or no bargain at all, but at the farmer's request or with his knowledge and acceptance, the law comes in and completes the bargain, or makes one for the parties. It does this on the principle that the working-man undertakes to do his work reasonably well, or according to any prevailing and acknowledged custom as to time and manner. And then that the farmer is bound to pay him a fair and reasonable price, measured by the custom of the time and place, if there is one applicable to the case, and by the judgment of the jury before whom the case comes.

A much more difficult question arises when a man who is hired to work on certain terms, for a certain time, works a part of the time as he ought to and then leaves his work and his employer. Can he recover from his employer payment for the work that he has done? There is some conflict in the law about this—that is, in the decisions of the courts on this question—and therefore some uncertainty as to the law. This difficulty springs from a rule of law relating to what is called "Entirety of Contract," which rule is, that if a party to a contract in which he engages to do one whole thing does only a part of it, he cannot claim payment for that part. In most cases this is perfectly reasonable. If a man agrees to sell a farm of a hundred acres for the price of $10,000, he cannot say, I have concluded to sell only half my farm, and you must give me for that $5,000. But where the whole thing consists of divisible parts, and to each part a proportionate part of the money can be applied, the rule is of course modified. Thus if A agrees to sell to B, and B to buy of A, one thousand bushels of potatoes of a certain quality at one dollar a bushel, if A delivers to B five hundred bushels and refuses to deliver the rest, B can say, I want my thousand bushels or none, and may then return to A the five hundred bushels received, and A has no claim on him. But he may choose to keep the potatoes received, and then he must pay for them the price agreed upon, and so he must if he has sold the five hundred bushels and cannot deliver them. But, on the other hand, he has a valid claim against A for anything he may lose by A's failure to deliver him that other five hundred. If, for instance, potatoes have risen in value to one dollar and fifty cents a bushel, B has lost by not receiving that five hundred bushels two hundred and fifty dollars, and may deduct this from what he has to pay. If the same rule were applied to the case of a man who at the beginning of the year engaged to work for all that year at fifteen dollars a month, and who worked for five months and then left at the beginning of the hay-making season, and then wages were at thirty dollars a month, the hirer would pay him fifteen dollars a month for the time he worked, deducting therefrom whatever he lost by the necessity of paying higher wages, and whatever he lost otherwise by the hired man's failure to perform his contract. Such is the view taken of the question by some eminent judges. But the greater part of our courts apply the rule strictly. They hold that if a hired man engaged for a year, leaves without sufficient cause at the end of the eleventh month, he forfeits all his wages and has no claim against the hirer for any part of them. All courts agree that if the hired man leaves because of insufficient food, ill-treatment by the hirer, disabling sickness, or other sufficient cause, the hirer is bound to pay him for the time he worked.

It may be added that it is important for the farmer to know and regard the rules pointed out in our chapter XII on the statute of frauds, especially in section III.

2. Liability of the Farmer for the Wrong-doing of his Help.—This liability rests upon an ancient rule of law, "What a man does by another he does by himself." Thus if a farmer ordered his hired man to steal his neighbor's sheep or wood, the hired man would be held as a thief, and the hirer would be

responsible also. But the hirer would not be responsible for the thefts of his help without his order or assent. All this is plain enough. The difficulty comes afterwards. It comes from the extension of the rule which makes an employer responsible for the negligence or ill-doing of one employed by him while actually engaged in doing what he is lawfully employed to do. The cases on this subject are numerous and some of them severe. Thus, if a farmer sets his help to cutting his wood and tells him distinctly where his line is, and the man forgets or mistakes and goes beyond that line and cuts his neighbor's wood, the farmer is responsible. If the hirer directs his help to build a fire in a safe place to burn up his rubbish, and charges him to take thorough care of it, and the man goes to sleep and lets the fire run into his neighbor's land, the farmer is responsible for all that this fire destroys.

SECTION XI.

HIRING OF A FARM.

We have considered the case of purchasing a farm. The great majority of farmers own their farms. But there are many exceptions. A man may hire a farm for a term of years, paying rent, or on shares, or on a tenancy which may be put an end to at the will of either party.

1. HIRING BY LEASE.—In our chapter on leases, page 610, we have given the general rules and principles governing leases, together with a variety of forms. We will now give some further rules and offer some suggestions upon points which it may be useful for a farmer to know and understand.

Any general description will suffice to put the tenant in possession of the land intended to be hired, if it be capable of distinct ascertainment and identification. And for this purpose certain words in common use, such as farm, land, house, field, wood-land, and the like, would be held to have a wide meaning. When such general and comprehensive terms are employed, all such things as are usually comprehended within their meaning will pass to the hirer by the lease, unless the language of the lease or the circumstances of the case show plainly that the intention of the parties was different. And inaccuracies as to quantities, names, amounts, etc., will be rejected if there is enough left to make the purposes and intentions of the parties certain. If the parties have undertaken to make a written bargain and have not made it, the law will not undertake to make one for them. But it will do all that can reasonably be done to carry into full effect, and exactly as was intended, the written bargain they have made.

Nevertheless there is a rule, not of law, but of common sense and prudence, which is applicable to everybody in all matters, but to no persons more so than to farmers in relation to their farms. This rule is, that it is at once easier and wiser to make all bargains and contracts such as will avoid questions and doubts than it is to answer these after they arise.

2. Renewal of Lease.—The lessor is not bound to renew a lease without an express covenant to that effect, which may be in the lease or in a separate instrument. A mere understanding or verbal promise is not sufficient in law, whatever it may be in honor or in morals.

The law does not favor such covenants, because they tend to perpetuity. But if there be such a covenant, and it is definite and reasonable, the law will sustain it. A covenant to "renew this lease under or with the same covenants" does not require that the new lease should contain the same covenant of renewal. For this would make the lease indefinite and perpetual at the pleasure of the hirer. But the covenant to renew covers all the other covenants and agreements of the lease. A covenant to "renew on such terms as may be agreed upon" is void for uncertainty.

3. Remedy for Non-payment of Rent.—Leases now in use almost always contain provisions on this subject, which are, generally, that the lessor may enter and expel the tenant if the rent be not duly paid, or that the tenant forfeits the lease and all rights under it by non-payment of rent. Provisions to this effect are expressed in various ways, but are substantially the same everywhere, and no particular words are necessary for this purpose. But it should be known and remembered that the law is exact and even punctilious as to the exercise of this right of re-entry. It may be said in general, that to justify re-entry in case of for-

feiture a demand must be made for the rent due and for the precise sum, and on the very day on which it becomes due and payable, and of the tenant himself, or if a place be prescribed in the lease where it is payable the demand must be made at that place, and if no place be prescribed then of the tenant himself, or at a conspicuous or notorious place on the premises leased. Of course when the rent is due it becomes a debt, for which all the ordinary means of recovering a debt may be resorted to. But if there be no clause of forfeiture for non-payment of rent, the lessor has not, at common law, a right of re-entry for this cause.

4. Tenant's Right to Vacate the Premises and Give up the Farm.—As the owner and lessor may expel the hirer and terminate the lease if he does not pay his rent, so the hirer has certain rights in this respect as against the owner. In England, from whence we derive our law, this law is very severe against the tenant. There the landlord is under no obligation to inform an intending lessee of defects or objections which he knows and the lessee neither knows nor has means of knowing, although the defects are entirely incompatible with such use of the premises as the lessor knows the lessee intends to put the farm to and indeed hires it for. The rule in this country may not be entirely settled. But we are decidedly of the opinion that a lessee who is so deceived, when he finds that he cannot cultivate the farm or make use of it in the manner he intended, may throw it up and the lessor has no claim against him.

Still more certain are we that the lease is cancelled and all right to rent is lost by any violent outrage or indecency on the part of the lessor, or any intentional and material interference by him with the tenant's proper use and enjoyment of the farm.

5. Apportionment of Rent.—The owner of a farm which he has let to a tenant can sell it as freely as if it were not leased. But he sells his farm subject to the lease, for he cannot impair the rights which the lessor has under the lease. The buyer becomes the lessor and has all the original owner's rights and is subject to all of his obligations which run with the land. So the owner may sell a part of the farm, or may sell the whole in parts to different purchasers, but this does not extinguish the obligations of the hirer or lessee, nor does it transfer them all

to any purchaser. So also the owner retaining his ownership may assign a portion of the rent—as one-fourth, or one-third, or one-half, or any other portion—to an assignee. Whether the owner sells a part of the farm, or the whole in parts to different purchasers, or assigns a part of the rent or the whole in parts, there must be *an apportionment of rent.* The tenant must pay the same rent as before, but now he pays it to the persons entitled to it, in the proportion in which they are entitled to it.

If the owner sells his farm in undivided parts, as one-half or one-third to one buyer and the residue to another, but without boundaries, there is no difficulty in apportioning the rent in the same way. But suppose the owner sells a part of the farm by boundaries, as if he sells certain fields or lots, the rent must now be apportioned according to *value* and not according to *quantity.* Here again the tenant has no other interest than to ascertain to whom he must pay his rent. If the owners and the buyers of the fields or lots agree together as to the apportionment of the rent, the lessee is bound by their agreement, because it is of no importance to him to whom he pays his rent. If they do not agree, it is a question of fact which a jury must settle for them.

So there may also be an apportionment by time, as when the lessor dies in the middle of the term for which the farm is leased. The lessee is now liable to the executors or administrators of the deceased for so much of the rent as accrued before he died, and to the heir afterwards, or to the heirs in the proportions in which they inherit the farm.

6. CULTIVATION OF THE FARM.—In our chapter on leases it is said that the tenant of a farm is bound, without express covenant, to manage and cultivate the same in such a manner as good husbandry and the usual course of management of such farms in his vicinity require. But it is seldom wise to leave this matter wholly unprovided for by express agreement. The owner and the hirer of a farm generally have an understanding on this subject, and this should be reduced to writing in the lease. Perhaps if nothing else be understood between them but customary and reasonably good cultivation, it is safe enough to leave this to the law. But more may be agreed upon, and espe-

cially there may be a distinct bargain as to certain crops, or a certain rotation of crops, or the cutting of wood, or what fields should be broken up or sown, and what, when, and where manure shall be placed, or what land sown to grass, etc. All these things should be most distinctly and carefully set forth in the lease as agreed upon. For no merely verbal agreements would have any effect. For here, as elsewhere, in accordance with the important rule laid down on page 74 of this volume, no evidence would be received to vary the lease or add to or diminish its obligations.

For the purpose of showing how and where special stipulations may be inserted we give the following form. The clause concerning renewal may be omitted if there is no agreement.

(243.*)

A Form of a Lease of a Farm.

This Indenture, Made the day of in the year of our Lord one thousand nine hundred and

Witnesseth, That I, (*name and residence of the lessor*) do hereby lease, demise, and let unto (*name and residence of lessee*) a certain farm or parcel of land, in the city (or town) of county of and State of with all the buildings thereon standing, and the appurtenances to the same belonging, bounded and described as follows:

(*The premises need not be described quite so minutely or fully as is proper in a deed or mortgage of land, but must be so described as to identify them perfectly, and make it certain just what premises are leased.*)

To Hold for the term of from the day of yielding and paying therefor the rent of

And said lessee does promise to pay the said rent in four quarterly payments on the day of , (*or state otherwise just when the payments are to be made*) and to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly, at the end of the term, in as good order and condition, reasonable and proper use thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor, and to pay the rent as above stated, and all taxes and duties levied or to be levied thereon, during the term, and also the rent and taxes, as above stated, for such further time as the lessee may hold the same, and not make or suffer any waste thereof; nor lease nor underlet, nor permit any other person or persons to occupy or improve the same, or any part thereof, or make or suffer to be made any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained; and that the lessor may enter to view and make improvements, and to expell the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof, or fail to fulfill any of the obligations hereinafter recited. That is to say, the said lessee hereby covenants and agrees that he will cultivate the said farm during all his possession of the same, in such manner as good husbandry requires, and in especial, that he will (*here insert carefully and fully all the agreements which the parties have made respecting the cultivation of the farm or to which the lessor intends to bind the lessee, and to which the lessee is willing to be bound*). And the said lessor on his part covenants that he will, at the request of the said lessee, renew the lease for the period of years, to begin at the expiration of his lease.

In Witness Whereof, The said parties have hereunto interchangeably set their hands and seals the day and year first above written.

(*Signature.*) (*Seal.*)
(*Signature.*) (*Seal.*

Signed, Sealed, and Delivered in Presence of

7. HIRING ON SHARES.—It is a common practice in many parts of this country, for the owner of a farm to let it "on shares." In some countries the great body of the land is let in this way; the proprietor finding for the use of the occupier, such cattle, seeds, implements or tools as may be agreed upon, and the tenant or occupier of the land paying to the proprietor the agreed proportion of the produce. This proportion varies in those countries with varying circumstances, from one-tenth to one-half; being generally from one-third to one-half. If parties in this country make a bargain of this sort, and wish to reduce it to writing, the foregoing form of a lease will answer their purpose, provided they write, in the place of the agreement about rent in that form, what each of the parties agrees to do by their bargain; the one as to what the lessor shall provide for the use of the hirer, and the other as to what share or proportion of the produce the lessee shall pay or deliver to the lessor or owner, and how it shall be delivered.

Other rules as to the rights and obligations of farmers as owners or hirers of a farm, or lessors and lessees, or landlord or tenants, will be found in our chapter XXXI on leases. Among them are the rules relating to repairs, and the obligation of either party to make them, rebuilding in case of fires, assignment of lease, or underletting of the whole or a part of the farm, the rights of out-going tenants to crops which he sowed and which mature after he leaves the farm, tenancy at will, and notice to quit; and other like points. For the law on these subjects we refer to that chapter.

INDEX.

For Index of Forms, See page 860.

A.

- ABANDONMENT, in the law of marine insurance, meaning of, 396.
  - not obligatory on insured, 397.
  - necessity of, 397.
  - of the right of, 397.
  - of the exercise of the right of, 399.
  - how made, and by whom, 399.
  - must be distinct, 399.
  - if deficient in form, objections, how waived, 400.
  - when insured *must* elect whether or not to abandon, 400.
  - acceptance of by insurer, 400.
  - of the effect of, 401.
  - masters and owners become trustees for the insurers in respect to the property abandoned, 401.
  - loss after must be made up by owner, 402.
- ACCEPTANCE of offer, when necessary to make a contract, 67.
  - of bills of exchange, 195.
  - how may be made, canceled, etc., 195.
  - can be done only by the drawee, his agent, or some one who accepts for his honor, 196.
  - no holder is obliged to receive an acceptance for honor, 197.
  - holder may accept or refuse a qualified, 196.
  - presentment for, 180.
  - or payment, for honor, 196, 197.
  - of abandonment in insurance, 400.
  - of insurer, not necessary to give full effect to an abandonment, 400.
- ACCEPTOR, of bill of exchange, 163.
  - of bill, bound to pay the same at maturity, 179.
  - rights and duties of, 195.
- ACCOMMODATION PAPER, incidents of, 174.
- ACKNOWLEDGMENT, necessary before recording deeds, 443.
- ACTIONS, abstract of the laws of all the States respecting the commencement of, 705.
- ADJUSTMENT, of average, 341.
  - by whom made, 342.
  - when binding, 341.
  - difference between marine and fire policy in, 425.
- ADMINISTRATORS, and executors, law of, powers and duties of, 790.
- AFFIRMATION, of consignee or agent, 364.
- AGENCY, in general, 207, 208.
  - may be established by subsequent ratification, 210.
  - general rules of, 210–214.
  - rights of action growing out of, 215, 216.
- AGENT, acting under *del credere commission*, 220.
  - must obey all instructions, 221.
  - commercial jurisdiction over seamen, 352.
  - extent and duration of authority of, 212–214.
  - general and particular, 208
  - binds the principal by his acts, 207.
  - liability of, 212.
  - may receive his authority, how, 209–212.
  - acts of, may be ratified by principal afterwards, 210.
  - may insure against fire, 415.
  - when master of ship is, 346.
  - in general, is entitled to indemnity from principal, 218.
  - cannot appoint a sub-agent unless authorized, 218.
  - is bound to use all reasonable care and skill, 218.
  - is responsible for any breach of duty, 218.
  - employed to sell property, cannot buy it himself, 219.

AGENTS must keep exact account of all doings, 219.
  when he may throw up the agency at pleasure, 220.
  authority of, is revoked by insanity, 220.
AGREEMENT AND ASSENT (chap. vi), 67.
  the legal meaning of, and requirement of, 67.
  when parties understand each other differently, what their rights, 68.
  in construing, the intention of the parties always a guide, 68.
  mistakes of fact in, may be corrected by the courts; mistakes of law cannot be, 68.
  what a legal assent is, 69.
  offers made on time, 70.
  a bargain made by correspondence, 71.
  what evidence may be received in reference to a written contract, 72.
  of custom, or usage, 74.
  to do work, when broken by promisor, without good cause, he cannot recover, 102.
  rules for determining, when original agreement has been somewhat departed from, 103.
  when may be and when it should be made without seal, 104.
  when under seal, and so formed that it becomes an indenture, 104.
  when by one only, without seal, it is a simple promise, 104.
  when by one only, under seal, it becomes a bond, 104.
  to be performed within a year, when not affected by the statute of frauds, 145.
  form, and subject-matter of, 146.
  if name be printed to, may be sufficient signature, 146.
  when it should be written and signed by both parties, 77.
  not controlled by oral testimony, except in case of fraud, 77.
  for sale of lands, should always state covenants contemplated, 85.
  for arbitration, not binding on any, unless all have entered into it, 100.
ALABAMA, law as to rights of married women in, 40.
  days of grace allowed, and legal holidays in, 201.
  statute of limitations in, 284.
  usury laws of, 308.
ALABAMA, number of witnesses and acknowledgment required to deeds of land executed in, 538.
  abstract of laws relating to collection and recovery of debts in, 705.
  chattel mortgages regulated, 653.
  number of witnesses to wills, 784.
  mechanics' liens, abstract of law of, 761.
ALASKA, mechanics' liens, 761.
  number of witnesses to wills, 784.

ALIENATION, in the law of insurance, what is considered such as to terminate the insured's interest, 423.
  consent of insurer should be obtained to, 423.
  of policy, 424.
ALLOWANCE, in the law of insurance, of new for old, 403.
ALTERATIONS, of policy of insurance, 371.
  effect of, on insured property, 412.
  prudent to obtain insurer's assent to, 413.
APPRENTICES (chap. iv), 34.
  obligations of the master, 35.
  obligations of the apprentice, 35.
  what misconduct of, authorizes a discharge of him by his master, 35.
  seducing an apprentice away from his master, liability for, 35.
APPLICATION, for insurance, how made, 409.
ARIZONA, law as to rights of married women in, 40.
  days of grace allowed and legal holidays in, 201.
  statute of limitations in, 285.
  usury laws of, 308.
  number of witnesses and acknowledgment required to deeds of land executed in, 538.
  abstract of laws relating to collection and recovery of debts in, 705.
  chattel mortgages regulated by statute in 653.
  number of witnesses to wills necessary in, 784.
  mechanics' liens, abstract of law of, 761.
ARKANSAS, law as to rights of married wome in, 40.
  days of grace allowed and legal holidays in, 201.
  statute of limitations in, 285.
  usury laws of, 308.
  number of witnesses and acknowledgment, required to deeds of land executed in, 538.

ARKANSAS, abstract of laws relating to collection and recovery of debts in, 706.
chattel mortgages regulated by statute in, 654.
number of witnesses to wills necessary in, 785.
mechanics' liens, abstract of law of, 761.
ARBITRATORS, submission to, when it may be set aside by either party, before award made, 254.
ARBITRATION, is favored by law, 250.
ARTICLES of shipping, 350.
ARREST, of vessel, how affecting insurers, 390.
abstract of the laws of all the States respecting, 705.
ASSIGNMENT, definition of, 113.
of policy of insurance, 372.
of policy, avoids it, when, 424.
of policy, should be made on it, 429.
always best to secure the insurance company's assent to, 429.
of policy, what constitutes, in life insurance, 435.
ATTACHMENT.—*See* RECOVERY OF DEBTS, 703.
abstract of the laws of all the States respecting, 705.
AUTHORITY, extent and duration of agent's, 212.
execution of, must be conformed to with strictness, 214.
of ship-master, 346.
AVERAGE, general, 338.
when within the scope of insurance, 402.
what is not included in, 339.
adjustment of, 341.
adjustment of, by whom made, when, 343.
AWARD, essentials of, 250.
must be certain, 251.
must be possible, 251.
when fully made, none of the parties have further control, 255.
should be sealed up and delivered to all the parties, 255.
must be reasonable, 251.
must be final and conclusive, 251.
no especial form of, necessary, 253.
the directions in submission of, must be strictly followed, 253.
set aside, if "procured by corruption or undue means," 253.
set aside, if the arbitrator has made a material mistake of law or fact, 253.

B.

BAILEE, may insure against fire, 416.
BANKS, receive more than legal interest, 305.
BANK BILLS, are promissory notes of a bank, payable to bearer, 172.
a good tender, unless objected to at the time, 172.
BANK CHECK, is a bill of exchange, 172.
requires no acceptance, 173.
if drawn when drawer has no funds in the bank, it is a fraud, 173.
usually payable to bearer, 173.
is not payment till cashed, 173.
countermanded by death of drawer, 174.
if a bank pay a forged, it is its own loss, 174.
BAGGAGE, carrier liable for reasonable amount of, 271, 272.
what has been held as, 271, 272.
BARGAIN, naked, is when no consideration is given, 97.
for real property, void when oral, 450.
BARRATRY, how defined, 390.
how provided against in the policy, 390.
BILL OF LADING, essentials of, 328–330.
signed by master of ship, 329.
evidence against shipowners, 329.
how given in case of charter parties, 335.
BILL, legal meaning of, 149.
of exchange, foreign and inland, 175.
maker or acceptor of, how bound to pay the same, 179.
what is meant by foreign, 186.
loss of, no excuse for not protesting it, 186.
notarial seal, evidence of dishonor of foreign, 186.
paid at maturity ceases to be negotiable, 195.
portion of, cannot be transferred, 195.
may be transferred by endorsement of executor, after death of the holder, 195.
of sale of vessel, 355.
of exchange, is what, 162.
difference between parties to promissory note and parties to, 166.
BLOCKADE, what it is, and law of, 391.
when it may be run, 391.
BOARDERS and guests at hotels, distinction between, 277.
BOND, essentials of, 104.
condition of, 105.

Bond of bottomry, 325–327.
  of respondentia, by whom given, 348.
  " applies to what, 348.
Bottomry, contract of, 325–327.
  bond of, 325–327.
  pledge, when justified, 347.
Brokers, have generally no authority to receive payment, 222.
Business Law, in general, in chap. ii, 27.
Buyer, acquires the right to consider no sale as made, if the seller neglects or refuses to deliver the goods in reasonable time, 119.
  when imposed upon by fraudulent sale must at once exercise right of annulling it, as soon as he knows the fraud, 128.

C.

California, law as to rights of married women in, 40.
  days of grace allowed, and legal holidays in, 201.
  statute of limitations in, 285.
  usury laws of, 308.
  number of witnesses and acknowledgment required to deeds of land executed in, 538.
  abstract of laws relating to collection and recovery of debts in, 707.
  chattel mortgages regulated by statute in, 654.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 762.
Canada, laws of, 58, 692, 700.
  usury laws of, 308.
Capture, how affecting insurers, 391.
Cargo, a part of the, when legal, may be insured, 376.
  when sold, or pledged by master, 347.
Carrier, is liable only for goods delivered to him, 272.
  is liable only for injuries done by himself or servants to third persons, 273.
  private, liability of, 257, 258.
  when gratuitous bailee, 258.
  private, liable for gross negligence, 258.
  common, who is a, 259.
  common, rights and responsibilities of, 259.
  common, distinction between private and, 259.
  common, who are chargeable as, 259, 260,
Carrier, common, obligation of, 261–266.
  common, cannot refuse goods without good cause, 261.
  common, is bound to receive goods in a suitable way, and at suitable times and places, 262.
  common, is bound to comply with directions, 262.
  common, obligation as to passengers, 262, 263.
  common, obligation as to delivery of goods, 264, 265.
  common, immediate notice must be given when not delivered to owner or agent, 264.
  common, lien of, on goods, 266.
  common, liability of, 266–268.
  common, liable for loss happening under his charge, except for act of God or public enemy, 267.
  common, liable for loss by fire, 267.
  common, general principles of agency apply to, 268.
  common, may be liable beyond his own route, 268.
  of passengers, is under more limited liability, than carrier of goods, 268.
  common, has a right to modify his liability by bargain, 269.
  common, notice by, if reasonable and just, is binding, 269.
  liability of, for goods carried by passengers, 271–273.
  liable for necessary amount of baggage, 271, 272.
  may insure against fire, 416.
Charter, power of master to, 346.
Charterer, of ship, rights of, 334, 335.
Charter Party, 359.
  defined, 334.
  no particular form for, 335.
  how suspended or annulled, 338.
  contract of, may be dissolved, how, 338.
Chattel Mortgages, abstract of the laws of all the States respecting, 653.
Choses in Possession, a law term, explained, 38.
Choses in Action, a law term, explained, 38.
Claim, for contribution, 338.
  of insured, founded on interest, 374.
Codicils, meaning of, law of, and rules concerning, 779.
Collision, who liable for, 348.

COLLISION, rules in regard to, 349.
  a peril of the sea, 389.
COLORADO, law of as to rights of married women, 41.
  days of grace allowed, and legal holidays in, 201.
  statute of limitations in, 286.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 708.
  chattel mortgages, regulated by statute in, 654.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 762.
COMMON CARRIER. *See* CARRIER.
COMMON LAW, as distinguished from statutes, 27.
COMMERCE, power to regulate, in Congress, 318.
COMMERCIAL AGENTS, jurisdiction of, over seamen, 352.
COMPOUND INTEREST. *See* INTEREST.
COMPANIES, for effecting fire insurance, 405.
  mutual, compared with joint stock, 405.
  usage of each other, may be appealed to in what cases, 407.
  all insured, become members in mutual fire insurance, 405.
COMPLIANCE, with terms offered, when it makes a contract, 69.
CONCEALMENT and misrepresentation, 383.
  converse of representation, 419.
  effect of, 419.
  when would operate as fraud, and avoid the policy, 420.
  in case of life insurance, 435–439.
CONDITION, of a bond, 105.
  on which application for insurance is based 409.
  effect of, in deed, 449.
CONFESSION, of judgment, 197.
CONNECTICUT, law as to rights of married women in, 42.
  days of grace allowed, and legal holidays in, 201.
  statute of limitations in, 286.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
CONNECTICUT, abstract of laws relating to collection and recovery of debts in, 710.
  chattel mortgages regulated by statute, in, 654.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 762.
CONSIDERATION, required to support a promise, 97.
  exceptions to the rule requiring consideration for a promise, 97.
  sufficiency of, 98.
  what is a sufficient, 98–100.
  cannot be anything by which the public interests are harmed, 99.
  one promise is sufficient, for another, 99.
  failure of, 102.
  when failure is partial only, may be foundation for promise, 102.
  merely moral, is not in law a sufficiently legal, 100.
  illegal, 101.
  impossible, 101.
  implied by seal, 106.
  need not be alleged in a bond, 106.
  need not be expressed in agreement, 146.
  what it may be, valuable, legal, or moral, 178.
  none sufficient when illegal, 178.
  may be illegal, in how many ways, 178.
  for the insurance, 370.
CONSIGNEE, may assign bill of lading, 329.
  cannot abandon goods for freight so long as they remain "in specie," 333.
  oath or affirmation, 365.
  may insure against fire, 415.
  may cover in one policy, in his own name, goods of various consignors, 415.
  not bound to insure, but may in his discretion, 415.
CONSTRUCTION, of statute of limitations, 279.
CONSULS, jurisdiction of, over seamen, 352.
CONTRACT, for building, should always be accompanied by specifications, 92.
  void for illegality or fraud, 126.
  when "wager," 127.
  is vitiated and avoided by fraud, 127.
  in general, the law of place governs every, 175.
  law of the court determines all questions as to remedy on a, 176.
  for usury, wholly void, 302.
  foreign, for usury, valid everywhere but in the States where suit is brought, may be enforced there, 304.

- **Contract**, law of place of, governs construction of, 314.
  - valid where made, valid elsewhere, 313.
  - is made when, 314.
  - is made where, 314.
  - as influenced by law of place, 314, 315.
  - of bottomry, 325-327.
  - of affreightment, is entire, 330.
  - of charter party, how dissolved, 338.
  - of insurance, 370.
  - of insurance, when complete, 407.
  - of insurance must be strictly regarded, 407.
  - general principles of construction of, 796.
  - some general rules of construction of, 797.
- **Contribution**, claim for, during embargo or capture, 338.
  - how made, 338.
  - for ship's repairs, 339.
- **Conveyances**, of ships, received, 318.
  - by one insured, when treated as a mortgage, 424.
- **Covenants**, of special or general warranty, should be stated in agreement for sale of lands, 85.
  - of warranty, in deed, 447, 448.
- **Copyrights**, law of, 696.
  - what may be the subject of, 696.
  - how copyrights may be obtained, 697.
  - period of time for which they secure the right, 696.
  - punishment for infringement of copyright, 698.
  - agreement respecting copyrights and publishing, 700.
- **Coverture**, a law-term, means marriage.
- **Creditors**, partnership, cannot attach private property till private creditors are satisfied, 241.
  - levy of private, on partnership property, confers only what the partner has, 241.
  - have an insurable interest in the life of their debtor, 434.
- **Custom**, of merchants, its force and effect, 28.
  - not valid if illegal, 29.
  - has no force when contract made expressly to the contrary, 76.
  - or usage, made use of in construing the meaning and effect of a contract, and of the words used, 74, 75.
  - never considered, if parties expressly agree to disregard it, 76.
  - effects of, on contracts, 802.

D.

- **Dakota, North and South**, law as to rights of married women in, N. D., 53; S. D., 55.
  - days of grace allowed, and legal holidays, in, N. D., 205; S. D., 206.
  - statute of limitations in, N. D., 294; S. D., 296.
  - usury laws of, N. D., 310; S. D., 311.
  - number of witnesses and acknowledgment, required to deeds of land executed in, N. D., 541; S. D., 541.
  - abstract of laws relating to collection and recovery of debts in, N. D., 738; S. D., 745.
  - chattel mortgages regulated by statute in, N. D., 660; S. D., 661.
  - number of witnesses to wills necessary in, N. D., 788; S. D., 789.
  - mechanics' liens, abstract of law of, N. D., 770; S. D., 772.
- **Damages**, when liquidated, when unliquidated, 134, 301.
- **Days of Grace** and holidays in all the States, abstract of, 201.
- **Debt**, barred under statute of limitations, 279.
- **Debtor** may insure his life in favor of creditor, 434.
- **Debts**, recovery and collection of, 703.
- **Deed**, meaning of legal and common, 440.
  - should be signed, and in what manner, 440.
  - seal of, is what, 441.
  - should be delivered, 441.
  - may be delivered by what persons, 442.
  - execution of, should be attested by witnesses, 442.
  - acknowledgment of, incidents of, 443.
  - must be registered in the proper recording office, 444.
  - effect of non-recording, 445.
  - should be dated, 445.
  - customary to name consideration in, 445.
  - receipt of consideration in does not bind seller, 446.
  - description of land in, should be minute and accurate, 446.
  - when conferring life-interest, merely, 446.
  - when conferring fee-simple, 447.
  - terminated by clause of execution, 447.
  - of warranty, or of quitclaim, 447.
  - of quitclaim, with warranty, 448.
  - hardly safe to have condition in, 449.
  - as to husband and wife joining in, 449.
  - variety of, 450.
  - deed-poll explained, 451.
  - of indenture, 451.

Deed of mortgage, 542.
  abstract of the laws of all the States relating to, 538.
Delaware, law as to rights of married women in, 43.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 286.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 711.
  chattel mortgages regulated by statute in, 655.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 762.
Delivery, what is sufficient to constitute, 121, 122, 124.
  as bearing on the validity of the transaction, 123.
  of policy, not essential, 407.
  necessary to assignment of life-policy, 435.
  essential to validity of deed, 441.
  of deed, may be made by whom, 442.
Demand of Payment, is sufficient, if made at residence or place of business of payee, 183.
  and refusal, what constitutes, 183.
  bankruptcy or insolvency no excuse for non demand, 183.
  should be made at the proper place, 185.
  for payments should be made at the place designated in the instrument, 185.
Demurrage, law respecting, 338.
Description, of property insured, 386.
  in the policy of insurance, 407.
  of insured property, held to amount to what, 410.
Desertion, of seamen, how punished, 353.
Deviation, how defined, 392.
  how affects insurers, 392.
District of Columbia, law of as to rights of married women, 43.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 287.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
District of Columbia, abstract of laws relating to collection and recovery of debts in, 711.
  chattel mortgages, regulated by statute in, 655.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 762.
Domicil, of person how determined, 315, 318.
  a person can have but one, 316.
  first is retained till second is acquired, 317.
  may be changed, how, 316.
  woman marrying acquires her husband's, 318.
  of the father determines that of child, 318.
Drawer, to bill of exchange, 163.

E.

Equity of Redemption, of mortgagor, 543.
Evidence, of death, what must be, 433.
  may disprove receipt in deed, 446.
  cannot be received to contradict or change the effect of a written contract, but may be received to explain it, 72.
  admissibility of extrinsic, to affect contracts, 805.
Exception, to common law rule, in case of negotiable paper, 176.
  statutory, under statute of limitations, 282.
Executor, may indorse bill or note after death of holder, 195.
Executors, law of, powers and duties of, 790.
Execution, of authority, 214.
  of fire policy, 407.
Exemption, of property, from attachment or execution, 704.
Exemptions, abstract of statutory provisions respecting in all the States, 705.
Explanation, of a written contract, by evidence, law as to, 72, 73.

F.

Factor, may pledge goods for advances to principal, 221.
  must obey all instructions, 221.
  liable to principal for default, 221.
  may insure goods in possession, 221.
  may use his own name in all transactions, 222.

FACTOR, distinction between foreign and domestic, 222, 223.
  cannot claim his commissions till his whole duty be performed, 222.
FARMER, legal rights and obligations of, 809.
  title by possession, 809.
  title by inheritance, 810.
  title by purchase, 810.
  sale of land at auction, 811.
  when land is sold at auction in several lots, 811.
  auctioneers' liabilities for sale of, 812.
  what one takes by the deed of a farm, 812.
  boundaries and descriptions, 812.
  contents of the farm, 813.
  fixtures, 814.
  things unremovable by outgoing tenant, 814.
  things removable by outgoing tenant, 815.
  rocks, stones, and soil, rights as to, 815.
  adjoining roads, rights as to, 816.
  trees, and neighbors' trees, rights as to, 816.
  trespassing on the farm, what is, 817.
  rights of the farmer as to the trespasser, 817.
  farm-ways, 818.
  water, rights to, 819.
  fire, right to make and liability for, 819.
  game animals, rights to, 821.
  domestic animals, rights and liabilities as to, 822.
  animals, sale of with warranty, 823.
  seeds, sale of with warranty, 824.
  fertilizers, sale of with warranty, 825.
  fruit trees, sale of with warranty, 825.
  help, hiring of, 825.
  help, rights and duties of, 826.
  help, liability of farmer for wrong-doing, 827.
  hiring of a farm, renewal of lease, 828.
  hiring of a farm, remedy for non-payment of rent, 829.
  hiring of a farm, tenant's right to give up the lease, 830.
  hiring of a farm, apportionment of rent, 831.
  hiring of a farm, cultivation of the farm, 831.
  hiring of a farm, on shares, 833.
FEME COVERT, means a married woman.
FEME SOLE, means a single woman.
FIRE INSURANCE, to what applied, 405.
  by whom effected, 405.
  different kinds of companies for, 405.
  method of, 409.
FORECLOSURE OF MORTGAGE, explained, 544.
FOREIGN AND INLAND BILLS, 175.
FLORIDA, law as to rights of married women in, 43.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 287.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 712.
  chattel mortgages, regulated by statute in, 655.
  number of witnesses to wills necessary in, 785.
  mechanics' liens, abstract of law of, 763.
FRAUD, annuls all obligations and all contracts tainted by it, 69.
  mere silence is seller, in general, is not, 128.
  vitiates and avoids all sales, 128.
  may be waived, when, 128.
  is waived, when action is brought to enforce the contract, 128.
  statute of, purposes and provisions, 142–147.
FREIGHT, is not earned unless the goods are carried to place of destination, 330.
  rule for, "pro rata itineris," 331.
  cannot be earned by illegal voyage, 333.
  paid in advance, not afterwards earned, must be repaid, 333.
  party receiving goods becomes liable for, 332.
  lender on bottomry bond has no right to, 333.
  mortgagee not in possession has no right to, 333.
  is payable when goods are delivered, in specie, though damaged, 333.
  word used how, 327.
  law of, 328.
  meaning of, 377.
  interest in, 377.
  subject of insurance, 377.

G.

Garnishee Process. *See* Recovery of Debts, 703.

Garnishment, abstract of the laws of all the States respecting, 705.

General Average, 338.
- sacrifice must be voluntary, necessary, and effectual, 339.
- law of, rests on, 339.
- goods not contributed for, when, 340.
- held for contribution, 341.
- when jettisoned, owner entitled to contribution, 340.
- value of insured, 374.
- rules relative to total loss of, etc., 402.

General Agency. *See* Agency, 207.

General Agent, master of ship is, 346.

Georgia, law as to rights of married women in, 44.
- days of grace allowed, and legal holidays in, 202.
- statute of limitations in, 287.
- usury laws of, 309.
- number of witnesses and acknowledgment required to deeds of land executed in, 539.
- abstract of laws relating to collection and recovery of debts in, 713.
- chattel mortgages regulated by statute in 655.
- number of witnesses to wills necessary in, 785.
- mechanics' liens, abstract of law of, 763.

Guarantor, who is, 136.
- who pays principal's debt, may demand from the creditor the securities he holds, 137.
- not bound, unless he has knowledge of the acceptance of his guaranty, 138.
- discharged, if principal's liability is changed without guarantor's consent, 138.
- discharged, if the liability is extended by law, 138, 139.
- not always discharged by creditors giving debtor some accommodation or indulgence, 139.
- should have reasonable notice of principal's failure, 140.
- of a note or bill, is not entitled to as strict notice as indorser is, 190.

Guaranty, incidents of, 136-139.
- not generally negotiable, 136.

Guaranty may be enforced, when original debt cannot be, 137.
- contract of, construed strictly, 137.
- unless by sealed instrument, must be supported by a consideration, 137.
- not binding unless accepted, 138.
- specific, is not revocable, 139.
- if by an official, he is not bound personally, 140.
- margin, what is, 141.
- oral prevented by law, 143.
- effect of changing membership in a firm on, 139.

Guardians, law of, powers and duties of, 794.

H.

Holder, what he may do with a bill or note, 179.
- of negotiable paper, rights and duties of, 179.
- of bill, it is prudent for him to present the bill for acceptance without delay, 181.
- ill-health on part of, may excuse delay in presentment, 181.
- may refuse a qualified acceptance, 196.
- may cancel the acceptance, 196.
- is not obliged to receive acceptance for honor, 197.

Holidays, in all the States, abstract of, 201.

Homestead, law of, 704.

Hotel-keepers, rights and duties of, 276–278.
- have a lien on goods of guests for board, 276.
- must receive every guest, 277.
- liability of for loss of guests' property, 278.

Husband, bound to support his wife while she lives with him, or if he sends her away without good cause, 59.
- a man is bound to support as his wife one whom he lives with, and represents as his wife, 59.
- may indorse a note or bill given to the wife before marriage, 195.

I.

Idaho, law as to rights of married women in, 44.
- days of grace allowed, and legal holidays in, 202.
- statute of limitations in, 287.
- number of witnesses and acknowledgment required to deeds of land executed in, 539.

IDAHO, usury laws of, 309.
  abstract of laws relating to collection and recovery of debts in, 714.
  chattel mortgages regulated by statute in, 655.
  number of witnesses to wills necessary in, 786.
  mechanics' liens, abstract of law of, 763.
IGNORANCE OF LAW, excuses no one, 68.
ILLINOIS, law as to rights of married women in, 44.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 287.
  usury laws of, 309.
  number of witnesses, and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 715.
  chattel mortgages regulated by statute in, 655.
  number of witnesses to wills necessary in, 786.
  mechanics' liens, abstract of law of, 764.
INDIANA, law as to rights of married women in, 45.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 288.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 716.
  chattel mortgages regulated, 656.
  number of witnesses to wills, 786.
  mechanics' liens, abstract of law of, 764.
INDIAN TERRITORY, number of witnesses to wills necessary, 786.
INDORSEE, of bill of exchange, 163.
INDORSEMENT, is what, 191.
  by law merchant, bills and notes payable to order are rightfully transferred only by, 192.
  in full, or in blank, 192.
  as to special, 193.
  joint payees who are not partners must join in, 193.
  the signatures of all previous indorsers are admitted by each, 193.
INDORSEMENT may be restored if struck out by mistake, 194.
  may be made on the paper before the note or bill be drawn, 195.
  in blank, or in full, what they are, 171.
INDORSER, each admits by his indorsement the genuineness of each previous, 193.
  may make a bill payable to himself alone by special indorsement, 192.
  of bill of exchange, 163.
  right and duties of, 191, 192.
INFANTS, or minors, chap. iii, 30.
  who are, 30.
  when persons cease to be, 30.
  promise of, if not for necessaries, voidable by the infant, 30.
  promise of, for necessaries, not voidable by him, 32.
  promise of, may be confirmed, without words, 31.
  liable for frauds of any kind; therefore liable if he obtains goods or money by representing himself of full age, 32, 33.
  ratifies his promise to pay by keeping the thing for which he promised to pay, 33.
  necessaries, what are, 32.
  if one avoids a contract because made in infancy, he can take no benefit from it, 33.
  liable for *torts*, or wrong doing, 32.
INN-KEEPERS, rights and duties of, 276.
IOWA, law as to rights of married women in, 45.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 288.
  usury laws of, 309.
  number of witnesses and acknowledgment required to deeds of land executed in, 539.
  abstract of laws relating to collection and recovery of debts in, 717.
  chattel mortgages regulated by statute in, 656.
  number of witnesses to wills necessary in, 786
  mechanics' liens, abstract of law of, 764.
INSANITY, of principal or agent, revokes authority, 220.
INSTRUMENTS, irregular and ambiguous, 172.
INSURARLE INTEREST, and how discharged, 372.
INSURANCE, policy of, 370.

INSURANCE, marine, how effected, 370.
  how affected by date of policy, 370.
  proposals for, 370.
  constructive, 370.
  who may effect, 370.
  how it is construed, 371.
  sustained by compliance with registry laws, how, 377.
  simultaneous, 378.
  effect of prior, 377.
  on freight, 377.
  double, 378.
  against piracy, 387.
  against robbery, 387.
  against theft, 387.
  terminates when, 396.
  purpose and principle of the law of, 403.
  effect of, in case of partial loss, 403.
  contract for, when complete, 407.
  application, how obtained, 409.
  on what conditions made, 409.
  must be actual authority to make, 416.
  double, not allowed, 417.
  double, how avoided by charter of company, 417.
  evidence of overstatement of loss in, 426.
  fire, no rule in for deducting one-third new for old, 426.
  companies require sworn statement of circumstances of loss, 427.
  against accident, disease, and dishonesty of servants, 439.
INSURED, must communicate what things, 384.
  must account for proceeds of sale when made by the master under necessity, 399.
  may abandon, when, 400.
  party, bound by what rules, 407.
  all become members when insured in mutual insurance companies, 405.
  must have an interest in the property insured, 414.
  when liable for assessments after loss under mutual policy, 426.
  must have an interest in life insurance, 434.
INSURER, how bound by the contract, 370.
  discharged by concealment or misrepresentation, 383.
  liable for what risks, 387.
  when liable for collision, 389.
  how far answerable for perils of the sea, 388.
INSURER, held for losses by fire, 389.
  liable for theft after shipwreck, 389.
  liable for misconduct of the crew, when, 390.
  when liable under the general clause, 391.
  liabilities in case of prohibited or contraband trade, 391.
  liabilities in case of capture, arrest, or detention, 390.
  how affected by detention, 390.
  how affected by deviation, 392.
  by payment for loss, acquire the insured's claim for contribution, etc., 403.
  when discharged by alterations, 413.
  must know whom they insure, 416.
  should be informed of what facts, 420.
  risk incurred by, 421.
  when not chargeable, 421.
  whether held for loss occasioned by negligence of the insured or his servants, 422.
  liable for buildings blown up to check fires, 421.
  when liable for property destroyed by lightning, 421.
  never held to pay more than sum insured, 422.
INSURERS, against fire, not held to pay for loss of profits, 425.
  pay whole amount lost, when covered by policy, 425.
  have a right to rebuild premises when destroyed, 425.
INTENTION, in construction of policy, 408.
INTEREST, is what, 300.
  may be demanded, on what grounds, 300.
  is allowed by law, how, 300.
  not generally recoverable, when, 301.
  laws regulating, 301.
  when usurious, 301.
  banks receive more than legal, 305.
  compound, incidents of, 307, 308.
  compound, is not strictly usurious, 307.
  method of computing, 308.
  insured's claim founded on, 375.
  insurable, 374.
  insurable, how discharged, 375.
  of the insured, 414.
  of mortgagor and mortgagee, as to insuring mortgaged property, 414.
  who have an insurable interest, 414, 415.
  exception as to the rule of any one allowed to insure property as his own in which he has a legal interest, 415.

INTEREST of the insured in life insurance, 434.
INTERPRETATION of contracts, the, 76.

J.

JOINT-TENANCY, and JOINT-TENANTS, law-terms; when two or more persons own anything jointly, as *joint-tenants*, if one dies, the survivor or survivors take the share or interest of the deceased person, 243.
JUDGMENT, confession of, 198.
JUDGMENTS, abstract of the laws of all the States respecting, 705.
JURISDICTION, over salvage cases, 345.

K.

KANSAS, law as to rights of married women in, 46.
  days of grace allowed, and legal holidays in, 202.
  statute of limitations in, 288.
  usury laws of, 309.
  number of witnesses, and acknowledgment required to deeds of land executed in, 540.
  abstract of laws relating to collection and recovery of debts in, 719.
  chattel mortgages regulated by statute in, 656.
  number of witnesses to wills necessary in, 786.
  mechanics' liens, abstract of law of, 764.
KENTUCKY, law as to rights of married women in, 46.
  days of grace allowed, and legal holidays in, 203.
  statute of limitations in, 289.
  usury laws of, 309.
  number of witnesses, and acknowledgment required to deeds of land executed in, 540.
  abstract of laws relating to collection and recovery of debts in, 720.
  chattel mortgages regulated by statute in, 656.
  number of witnesses to wills necessary in, 786.
  mechanics' liens, abstract of law of, 765.

L.

LANDS can be transferred by deed only, 440.
LAW-MERCHANT, what is meant by it, 28.
LAW-TERMS, some explanation of, 29.
LAW OF PLACE, 175.
  what is meant by, 312.
  as influencing contracts, 313.
  general principles of, 312, 313.
  of a State binds all persons and things within the limits of the State, 312, 313.
  has no force beyond the limits of the State, 313.
  of foreign States, have, by comity, a qualified influence, 313.
  of contract, governs the effect of the contract in regard to personal property, 313.
  of real property, governs the construction of the contract, 313.
LAW, of shipping, how considered, 318.
  of freight, 328.
  of foreign country is presumed to be the same as in the place of suit, in absence of testimony, 176.
LAWS, regulating pilotage, 353.
  regulating interest and usury, 301.
LAY-DAYS, are what, 337.
LEASE, definition of contract of, 604.
  what passes to tenant under, 604.
  duties and obligations of landlord under, 604.
  rights and duties of tenant under, 605-608.
  privilege of underletting by tenant under, 606.
  tenant when entitled to crops sown during the, 607.
  rights of tenant after expiration of, 607.
  what fixtures may be removed at expiration of, 608.
  abstract of the laws concerning, 609.
LENDER may charge extra price for risk incurred, 305.
  on bottomry bond has no right to freight, 333.
LIABILITY of an agent, 215.
  of carrier for baggage of passengers, 271.
  of carrier may be modified by notice, 269.
  of carrier, to third persons, for injury done them by carrier or servants, 273.
  of insurers, not affected by risk of the market, 404.
  none attaches to the insurers for a loss occurring by natural or other causes not insured against, before a loss insured against happens, 405.
  of master for discharging seamen, 353.

LETTER, contract by, 71.
" " completed when letter of acceptance mailed, 71.
LIBEL, when presented, 343.
LIBERTY POLICIES, 393.
LIEN, means the right of the seller to retain the property till some claim he has is satisfied, 118.
is lost by the seller, if the goods are delivered, 118.
of bottomry bond, depends not on possession, 327.
ship has, on goods for freight, 330.
of seamen, on ship and freight for wages, 351.
of material men, for supplies to ships, 354.
of carrier, on goods, 266.
of mechanics and material men, law of, with forms and directions, 761.
LIFE INSURANCE, purpose and method of, 430.
how effected, 430.
rules of contracts applicable to, 430.
premium for, how paid, 431.
LIFE-POLICIES, assignable at law, 434.
LIMITED PARTNERSHIPS, requisites of, 244.
LIMITATIONS, statute of, 278.
statute of, construction of, 279.
statute of, new promise under, 280.
statute of, part payment under, 281.
statute of, when period of limitation begins under, 283.
statute of, statutory exceptions under, 282.
statute of, does not affect collateral security, 284.
of owner's liability for master's misdeeds, 350.
abstract of statutes of, in all the States, 284.
LOSS, how divided for average and contribution, 341.
and abandonment, 396.
no total, by abandonment, unless the injury exceeds fifty per cent., 397.
by jettison, salvage, etc., included in estimate of the, 398.
after abandonment, must be made up by owner, 401.
insurers entitled to possession after payment for total, 401.
of several insured shipments, there may be total loss of one, partial of another, 402.
LOSS, when partial, 403.
rule for averaging, by allowing one-third for new, 403.
third part of, what deducted from, 404.
what would be evidence of overstatement of, 423.
LOUISIANA, law as to rights of married women in, 47.
days of grace allowed, and legal holidays in, 203.
statute of limitations in, 289.
usury laws of, 309.
number of witnesses and acknowledgment required to deeds of land executed in, 540.
abstract of laws relating to collection and recovery of debts in, 721.
chattel mortgages regulated by statute in, 656.
number of witnesses to wills necessary in, 786.
mechanics' liens, abstract of law of, 765.

M.

MAKER, of promissory note, 166.
rights and duties of, of negotiable paper, 179.
of a bill, is bound to pay the same at maturity, 179.
MAIL, putting a letter in, effect of as to contract, 71.
MAINE, law as to rights of married women in, 48.
days of grace allowed, and legal holidays in, 203.
statute of limitations in, 289.
number of witnesses and acknowledgment required to deeds of land executed in, 540.
usury laws of, 309.
abstract of laws relating to collection and recovery of debts in, 722.
chattel mortgages regulated by statute in, 656.
number of witnesses to wills necessary in, 787.
mechanics' liens, abstract of law of, 765.
MARINE INSURANCE. *See* INSURANCE, 369.
MARYLAND, law as to rights of married women in, 48.
days of grace allowed, and legal holidays in, 203.
statute of limitations in, 290.
usury laws of, 309.

MARYLAND, number of witnesses and acknowledgement required to deeds of land in, 540.
abstract of laws relating to collection and recovery of debts in, 723.
chattel mortgages regulated by statute in, 657.
number of witnesses to wills necessary in, 787.
mechanics' liens, abstract of law of, 765.
MARRIED WOMEN (chap. v), 37.
rights of the husband at common law, as to, 37.
all the property, real or personal, 38, 39.
common law as to, not just or right, and changed by statute in nearly all our States, 39.
law of, as it stands in the statutes of the several states, ABSTRACT of, 40.
wife may always be agent of her husband, 59.
the frequent necessity of putting their property under trust, and how it can be done, 60.
MASSACHUSETTS, law as to rights of married women in, 49.
days of grace allowed, and legal holidays in, 203.
statute of limitation in, 290.
usury laws of, 309.
number of witnesses and acknowledgment required to deeds of land executed in, 540.
abstract of laws relating to collection and recovery of debts in, 724.
chattel mortgages regulated by statute in, 657.
number of witnesses to wills necessary in, 787.
mechanics' liens, abstract of law of, 766.
MASTER OF SHIP, should sign bill of lading, 329.
and officers, not salvors, 344.
holding goods for contribution, 344.
powers and duties of, 346.
power to sell the ship, 346.
his liability for discharging seamen, 353.
duties of repairing ship, 346.
MATERIAL-MEN, lien of, 354. *See* LIENS OF MECHANICS AND MATERIAL-MEN.
MECHANICS, liens of, 761.
MICHIGAN, law as to rights of married women in, 49.
MICHIGAN, days of grace allowed, and legal holidays in, 203.
statute of limitations in, 290.
usury laws of, 310.
number of witnesses and acknowledgment required to deeds of land executed in, 540.
abstract of laws relating to collection and recovery of debts in, 725.
MICHIGAN, chattel mortgages regulated by statute in, 657.
number of witnesses to wills necessary in, 787.
mechanics' liens, abstract of law of, 766.
MINNESOTA, law as to rights of married women in, 50.
days of grace allowed, and legal holidays in, 204.
statute of limitations in, 291.
usury laws of, 310.
number of witnesses and acknowledgment required to deeds of lands executed in, 540.
abstract of laws relating to collection and recovery of debts in, 727.
chattel mortgages regulated by statute in, 658.
number of witnesses to wills necessary in, 787.
mechanics' liens, abstract of law of, 767.
MISREPRESENTATION AND CONCEALMENT, 383.
MISSISSIPPI, law as to rights of married women in, 50.
days of grace allowed, and legal holidays in, 204.
statute of limitations in, 291.
usury laws of, 310.
number of witnesses and acknowledgment required to deeds of lands executed in, 540.
abstract of laws relating to collection and recovery of debts in, 728.
number of witnesses to wills necessary in, 787.
chattel mortgages regulated by statute in, 658.
mechanics' liens, abstract of law of, 767.
MISSOURI, law as to rights of married women in, 50.
days of grace allowed, and legal holidays in, 204.
statute of limitations in, 291.

- Missouri, usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 540.
  - abstract of laws relating to collection and recovery of debts in, 729.
  - chattel mortgages regulated by statute in, 658.
  - number of witnesses to wills necessary in, 787.
  - mechanics' liens, abstract of law of, 767.
- Mistakes of fact may be corrected by the courts, but mistakes of law will not be, 68.
- Montana, law as to rights of married women in, 51.
  - days of grace allowed, and legal holidays in, 204.
  - statute of limitations in, 292.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 540.
  - abstract of laws relating to collection and recovery of debts in, 730.
  - chattel mortgages regulated by statute in, 658.
  - number of witnesses to wills necessary in, 787.
  - mechanics' liens, abstract of law of, 767.
- Mortgage of Land, or real estate, 542.
  - law of, and rules concerning, 543.
  - of the equity of redemption, 543.
  - of foreclosure, 544.
  - of the mortgagor's right to possession, 545.
- Mortgage, of vessel, 357.
  - purpose of, 542.
  - how expressed, 543.
  - containing power of sale, 544.
- Mortgage of Personal Property, not so formal as for land, 646.
  - mortgagor may retain possession if mortgage be recorded, 646.
  - equity of redemption shorter than in land, 646.
  - cannot be made of property to be afterwards acquired, 647.
  - duties and liabilities of pledgee under, 647.
  - difference between mortgagee and pledgee in, 647.
  - pledgee under, cannot sell the pledge before the debt is due, 647.
- Mortgage of Personal Property, under, pledgee may sell the pledge when the debt is due, and after notice given, 648.
- Mortgagee of ship, in possession, liable as owner, 325.
  - of ship, not in possession, no right to freight, 333.
  - insurable interest in property, 414.
  - has what title to land mortgage, 543.
- Mortgagor, insurable interest of in property, 414.
  - right of, in regard to mortgaged land, 543.
  - duty of, in regard to redemption, 544.
- Mutual Insurance Companies, amount insured in, 407.

N.

- Nebraska, law as to rights of married women in, 51.
  - days of grace allowed, and legal holidays in, 204.
  - statute of limitations in, 292.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 540.
  - abstract of laws relating to collection and recovery of debts in, 731.
  - chattel mortgages regulated by statute in, 659.
  - number of witnesses to wills necessary in, 787.
  - mechanics' liens, abstract of laws of, 768.
- Negotiable Paper, what is meant by, 161.
  - rules of law on subject of, are technical and exact, 161.
  - what is essential to, 168.
  - difference between what is, and what is not, 168.
  - time of payment of, must be certain, 168.
  - must be payable in money, 168.
  - may be written in pen or pencil, on paper or any proper substitute, and in any language, 169.
  - as to form of, 169.
  - omission of certain words may be supplied, 169.
  - contingency apparent on the face of, prevents negotiability, 169.
  - as to whether certain notes are, 169.
  - exception to common law rule in case of, 176, 177.
  - of transfer after dishonor, 180.

- NEGOTIABLE PAPER, rights and duties of holder of, 179.
  - rights and duties of maker of, 179.
  - payable at a time certain, is entitled to days of grace, 184.
  - in general, all parties to, entitled to notice, are discharged for want of it, 190.
  - bill or note ceases to be, when paid, 195.
- NEUTRALITY, warranty of, 380.
- NEVADA, law as to rights of married women in, 51.
  - days of grace allowed, and legal holidays in, 204.
  - statute of limitations in, 292.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 540.
  - abstract of laws relating to collection and recovery of debts in, 732.
  - chattel mortgages regulated by statute in, 659.
  - number of witnesses to wills necessary in, 788.
  - mechanics' liens, abstract of law of, 768.
- NEW HAMPSHIRE, law as to rights of married women in, 52.
  - days of grace allowed, and legal holidays in, 204.
  - statute of limitations in, 292.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 733.
  - chattel mortgages regulated by statute in, 659.
  - number of witnesses to wills necessary in, 788.
  - mechanics' liens, abstract of law of, 768.
- NEW JERSEY, law as to rights of married women in, 52.
  - days of grace allowed, and legal holidays in, 204.
  - statute of limitations in, 293.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 734.
  - chattel mortgages regulated by statute in, 659.
- NEW JERSEY, number of witnesses to wills necessary in, 788.
  - mechanics' liens, abstract of law of, 768.
- NEW MEXICO, law as to rights of married women in, 52.
  - days of grace allowed, and legal holidays in, 205.
  - statute of limitations in, 293.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 735.
  - chattel mortgages regulated by statute in, 659.
  - number of witnesses to wills necessary in, 788.
  - mechanics' liens, abstract of law of, 769.
- NEW PROMISE, by one who had made the original promise when an infant, 31.
  - a mere acknowledgment not enough, 31.
  - may be conditional, 31.
  - if conditional, condition must be performed, 31.
- NEW YORK, law as to rights of married women in, 53.
  - days of grace allowed, and legal holidays in, 205.
  - statute of limitations in, 293.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in 541.
  - abstract of laws relating to collection and recovery of debts in, 736.
  - chattel mortgages regulated by statute in, 660.
  - number of witnesses to wills necessary in, 788.
  - mechanics' liens, abstract of law of, 769.
- NORTH CAROLINA, law as to rights of married women in, 53.
  - days of grace allowed, and legal holidays in, 205.
  - statute of limitations in, 293.
  - usury laws of, 310.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 737.
  - chattel mortgages regulated by statute in, 660.

NORTH CAROLINA, number of witnesses to wills necessary in, 788.
mechanics' liens, abstract of law of, 769.

NOTE, promissory, differs from bill of exchange, 163.
indorsed in blank always transferable by delivery, 171.
when incomplete and invalid, 171.
to a fictitious payee with same name indorsed by maker, will be held the maker's own note, 171.
payable to different persons, in the alternative, not good, 172.
payable at any place should be demanded there, 185.
when not presented for payment, all parties but acceptor or maker are discharged, 185.
sale of, when amounting to usury, 306, 307.

NOTICE, of protest, must be given, even to one who has knowledge, 187.
no particular form of necessary, 187.
if letters be put in the office, any miscarriage does not affect the party giving notice, 187.
should be sent by public post, 187.
should be sent to place of business or residence of party notified, 188.
of non payment, should be sent in reasonable time, 188.
right to, may be waived by agreement, 190.
death or severe illness is excuse for delay of, 191.
want of, may be cured by express promise to pay, 191.

NOTICE OF NON-PAYMENT, there is no presumption of, 189.
each party receiving, has a day before he is to send it forward, 188.
should be given only by a party liable on the instrument, 189.
must be given to every antecedent party who is to be held, 189.
may be given to a party personally or his agent, 189.
may be given to either of partners jointly liable; if not partners, then to each one, 190.
one transferring, without indorsement by delivery, is not generally entitled to, 190.
to agent is notice to the principal, 189.

NOTICE OF NON-PAYMENT, common carrier has a right to modify his liability by, 269.
of carrier's liability, may be indirectly brought home to a person, 270.
general, will be enough to give to agents of insurer in case of loss, 425.

O.

OBLIGEE, one to whom the obligor is bound in a bond, 105.

OBLIGOR, one bound by a bond, 105.
held to pay so much only as will indemnify the obligee, 106.

OFFICERS OF SHIP, not salvors, 344.

OHIO, law as to rights of married women in, 53.
days of grace allowed, and legal holidays in, 205.
statute of limitations in, 294.
usury laws of, 311.
number of witnesses and acknowledgment required to deeds of land executed in, 541.
abstract of laws relating to collection and recovery of debts in, 739.
chattel mortgages, statute of, 660
number of witnesses to wills, 788.
mechanics' liens, abstract of law of, 770.

OKLAHOMA, abstract of laws, 54, 205, 294, 311, 541, 660, 740, 770, 789.

OREGON, law as to rights of married women in, 54.
days of grace allowed, and legal holidays in, 205.
statute of limitations in, 295.
usury law of, 311.
number of witnesses and acknowledgment required to deeds of land executed in, 541.
abstract of laws relating to collection and recovery of debts in, 741.
chattel mortgages regulated by statute in, 661.
number of witnesses to wills necessary in, 789.
mechanics' liens, abstract of law of, 770.

OWNER may recover goods from an honest purchaser who has bought from one with defective title, 119.
cannot recover from one who bought in good faith from one who bought fraudulently from the owner, 119.

OWNERS, when bound by master's acts, 346, 347.
  when liable for injuries done by master, 346.
  of sacrificed property acquire claim for contribution, 403.

P.

PARTNERS, liability and authority begin when, 229.
  may share the profits or losses as they choose, 229.
  persons may be liable as, to third persons who are not as between themselves, 230.
  who is a secret, dormant, or nominal, 230.
  factors, brokers, etc., are not partners with those employing them, 231.
  may dissolve the partnership at pleasure when working no disadvantage to the others, 231.
  dissolution occurs by death of a general or special, 232.
  dissolution also when one partner's whole interest is sold on execution, 233.
  dormant or secret partner is not liable for debts contracted after his retirement, 233.
  should give notice of retirement, 233.
  each one is agent for all, 234.
  one cannot bind the firm by a guaranty, a letter of credit, or submission to arbitration without authority, 235.
  may bind the firm by instrument under seal, 235.
  must act as such, to bind the firm, 236.
  reception of a new, makes a new firm, 237.
  borrowing money for partnership purposes creates a partnership debt, 237.
  obtaining credit for partnership purposes makes the firm liable, 237.
  partner in general cannot sue another for claim growing out of partnership interests, 239.
  either may sue for balance on adjustment of accounts, 239.
  may sue his copartner for money advanced before partnership formed, 239.
  who pays more than his share of a debt must charge the firm, 240.
  the firm may sue for goods sold in the name of one, 240.
  surviving, are tenants in common only with representatives of deceased, 243.
PARTNERSHIP, is not credited by single joint transaction, 229.
  all persons competent to do business on their own account may enter into, 229.
  when created, 228
  no especial form is necessary for, 229.
  may be formed how, 229.
  usually is but one business name to a, 231.
  principal test of, is participation in profits, 231.
  may hold real as well as personal estate, 233.
  can have no seal at law, 236.
  money lent one partner for partnership purposes, makes a debt of the, 237.
  firm is liable only to one who deals with a partner in good faith, 238.
  may be liable for injury caused by criminal acts of a partner, 238.
  funds of, must first be applied to partnership debts, 241.
  creditors cannot attach private property till private creditors are satisfied, 241.
  property goes, in case of death of one partner, to the others, only for purpose of settlement, 243.
  limited, requisites of, 244.
  effect of dissolution of, 243.
  dissolution of, held to avoid policy of insurance, 424.
PART OWNERS OF SHIPS, rights and obligations of, 323.
  of ships, not necessarily partners, 323.
  may sell his share of ship, 323.
  all are liable for repairs to ship, 323.
  ship's husband, is commonly one of, 324.
PASSAGE-MONEY, rules of, analogous to those of freight, 334.
PASSENGERS, may be salvor, 344.
PATENTS, the law of, 664.
  what may be patented, 664.
  who is entitled to a patent, 664.
  what will prevent the granting of a patent, 665.
  mode of proceeding to obtain a patent, 665.
  applications; what, and how to be made, 665.
  specifications; what, and how to be made, 666.
  oath, or affirmation; what, and how to be made, 668.

PATENTS, foreigners; what they must do, 669.
  drawings; how they must be made and sent to the patent-office, 669.
  model; how it must be made and sent to the patent-office, 670.
  examination, when, and how made in the patent-office, 670.
  appeals to the examiners-in-chief, 672.
  appeals to the Supreme Court of the District of Columbia, 673.
  rules regulating the above appeals, 673.
  interferences, 674.
  re-issues, and surrender, 675
  disclaimers, 678.
  extensions, 678.
  designs, how they may be patented, 678.
  foreign patents, do not prevent taking one here, 681.
  caveats, 681.
  assignments and grants of patent-rights, 683.
  fees payable to the patent-office; what, and how payable, 687.
  testimony, how taken and transmitted, 688.
PATENT LAW of the Dominion of Canada, 688.
PAYEE, of bill of exchange, 167.
  of promissory note, 166.
  must be designated, 170.
PAYMENT, how may be made, 147.
  negotiable bill or note, is not an absolute, 148.
  appropriation of, among several debts, 149.
  may be appropriated at time of, by payor, 149.
  impossibility of presenting a bill for, excuse some delay, 183.
  time of, in negotiable paper, must not depend on a contingency, 168.
  of negotiable paper, must be in money, 168.
  of bills, notes, etc., is to be demanded promptly, though need not be done instantly, 184.
  demand of, is sufficient, if made at usual residence or place of business of payer, 183.
  what constitutes demand, and refusal of 183.
  bankruptcy or insolvency no excuse for not demanding, 183.
  bills on demand should be presented in a reasonable time for, 184.
PAYMENT, every demand for should be made at the proper place, 185.
  part, takes debt from under statute of limitation, 281.
  debtor may appropriate, to any one of several debts, 281.
PENALTY, of a bond, 105.
  for not signing shipping articles, 350.
  for discharging seamen without their consent, 353.
PENNSYLVANIA, law as to rights of married women in, 54.
  days of grace allowed, and legal holidays in, 205.
  statute of limitations in, 295.
  usury laws of, 311.
  number of witnesses and acknowledgment required to deeds of land executed in, 541.
  abstract of laws relating to collection and recovery of debts in, 742.
  chattel mortgages, regulated by statute in, 661.
  number of witnesses to wills necessary in, 789.
  mechanics' liens, abstract of law of, 771.
PERILS, of the sea, 388.
  by fire, 389.
PILOTS, responsibilities of, 353.
PLACE, what is meant by law of, 312.
  general principles of law of, 312.
  law of, influencing contracts, 314.
POLICY, of insurance, 370.
  subsequent additions to, 371.
  of insurance, how affected by assignment, 372.
  of insurance, assignment of, 372.
  of insurance, when altered, 371.
  when open or valued, 372.
  wager, 372.
  value insured in an open, 373.
  memorandum in, 379.
  express warranty in, 379.
  embraces what perils, 387.
  providing against barratry by clause in, 390.
  liberty, 393.
  as to total loss, in the provisions of the, 398.
  valuation in the, generally determines the estimate of the loss, 398.
  of fire insurance, what necessary to execution of, 407.
  when delayed, and company not bound, 407.

POLICY, subsequent ratification by an agent, what effect, 408.
  of fire insurance, how constructed as to description, 408.
  intention must be expressed in, 408.
  words "stock in trade" include what in, 408.
  memorandum on back of, 409.
  mistake in, 409.
  when some parts written, some printed, 409.
  containing scale of premiums, 410.
  when void, for false statement of applicant, 410.
  how affected by greater hazard for a time, 411.
  when made by consignee will be construed to cover his interest only, when no interest is expressed, 415.
  by commission merchant, in his own name, when it may cover goods of various consignors, 415.
  provisions against double insurance, 416.
  when separate statements are part of, 417.
  indorsement made upon, may take effect as part of, though made before executed, 418.
  when statement not construed as part of, 418.
  difference between marine and fire, 419.
  when avoided by misrepresentations or concealments, 419.
  always avoided by warranty broken, 419.
  parties may make a valued, 422.
  is personal contract between the parties, 423.
  against fire, contains provision against assignment, 424.
  production of, certificate of loss, is condition precedent to payment, 424.
  difference of adjustment between marine and fire, 425.
  assignment of, should be made on it, 429.
  assent of insurers had best be obtained to assignment of, 429.
  time of death in case of life insurance has important effect on payment of the, 432.
  restrictions on the life insured in the, 432.
  when avoided by death by suicide, 433.
  takes effect from date, 394.
  never attaches in case of unreasonable delay in sailing, 394.
POLICY, how affected by the words "at," "to," and "at and from," 394.
  on goods attaches when, 394.
PORT, what is meant by, in policy, 394.
POWER, to sell, implies power to warrant, etc., 209.
  of ship-master, 346–350.
  of attorney, custom-house, 366.
PREMIUM, when due and how paid, 385.
  when may be returned, 385.
  how paid in case of life insurance, 431.
  in case of life insurance when paid, 431.
  extra required in what cases, 433.
PRESENTMENT, for acceptance, 180.
  should be made during business hours, 181.
  should be made to drawee or his agent, 181.
  for demand of payment, 182.
  for demand of payment, same for notes and bills, 182.
  for demand of payment, universal rule of law merchant in regard to, 184.
PRESUMPTION OF LAW, affecting contracts how, 801.
PRINCIPAL is bound by acts of the agent, 207, 208.
  may confer authority on agent how, 209.
  has power of revocation in general, 213.
  when undisclosed, may show that the nominal party was actually his agent, 216.
  is responsible for injuries resulting from a fraudulent representation of the agent, 216.
  is bound by payment of money to an agent only when done in regular course of business, 216.
  not responsible for criminal acts, unless he expressly commanded them, 217.
  who accepts the benefit of an act done by his agent discharges him from responsibility therefor, 217.
  general rule is, he may revoke his agent's authority at pleasure, 22c.
  cannot revoke authority given to factor after advances made, 222.
PROFITS, how valued and insured, 373.
PROMISE, of promissory note, 168.
  must be supported by a consideration, 97.
  to pay another's debt when original, when collateral, 143, 144.
  in negotiable paper, must be absolute, 168.

PROMISE, barred under statute of limitations, 279.
  new, sufficient to take case from statute of limitations, 280.
  new, not implied from mere acknowledgment, 280.
  implied by part payment, 281.
PROMISE, can never be enforced by one who knew the performance thereof impossible, 101.
  cannot be enforced when supported only by a valueless consideration, though it was at first apparently good, 102.
  when severable, what may or may not be enforced, 102.
  for work to be done, when broken without good cause by promisor, he cannot recover, 102.
PROMISOR, of promissory note, 166.
PROMISSORY NOTE, differs from bill of exchange, 166.
  is what, 167.
  not negotiable when, 168.
  on demand is considered as intended as a continuing security, 180.
PROPERTY, legal meaning of word, 117.
  of partnership is bound to pay partnership debts, 241.
  insured, description of, 386.
  insured must contribute to general average when, 402.
  claim for contribution acquired by owners of sacrificed, 403.
  under insurance, effect of alterations on, 412.
PROPOSALS, of insurance, 370.
PROTEST, and notice, 186–191.
  demand and, must be made according to law of the place where the bill is payable, 186.
  loss of bill no excuse for not protesting, 186.
  should be made on day of demand and refusal, 186.
  Notice of, various incidents of, 186–190.
PROVISION by statute in behalf of seamen, 350.
  of seamen provided by owner, 351.
PUBLIC PROPERTY, retained for contribution, 341.
PURPOSE and use of this book (chap. i), 23.

R.

REAL PROPERTY, may be held by partnership, 233.
  oral bargain for, of no effect, 450.
REASONABLE TIME, allowed by law for an acceptance of an offer; what this time is, 70.
RECEIPTS, definition of, 150.
  open to explanation or contradiction, 151.
  in deed, may be shown not for value, 446.
RECORDING of deeds, essentials of, 444.
RECOVERY OF DEBTS, attachment, trustee process, garnishee process, homestead, and exemption from execution, 703.
RECOVERY OF DEBTS, abstract of the laws of the States respecting, 705.
REGISTRATION OF SHIPS, 318–320.
RELEASE, differs from receipt, 151.
  in the nature of a contract, requires consideration, 151.
REPAIRS, of ship, 340.
  value of old material should be deducted in case of, 404.
  how affecting insurer and insured, 413.
REPRESENTATION, and warranty, 417.
  differs from a warranty, 418.
  how affecting the policy, 417.
  if in writing or in parol, 419.
  in case of life insurance, 434–438.
RETRACT, when and how one may retract his offer, 71.
REVOCATION is in general within the power of the principal, 213.
  of submission may be made by either party, 254.
  of submission, the other party has damages for, 254.
  of submission, notice must be given of, 255.
  of submission, bankruptcy does not amount to, 255.
  of an offer, when, how, by whom, 71.
REVOCATION OF WILLS, 780.
RHODE ISLAND, law as to rights of married women in, 55.
  days of grace allowed, and legal holidays in, 206.
  statute of limitations in, 295.
  usury laws of, 311.
  number of witnesses and acknowledgment required to deeds of land executed in, 541.

- RHODE ISLAND, abstract of laws relating to collection and recovery of debts in, 743.
  - chattel mortgages regulated by statute in, 661.
  - number of witnesses to wills necessary in, 789.
  - mechanics' liens, abstract of law of, 771.
- RIGHTS, of action growing out of agency, 215,
  - of the firm against third parties, 240.
  - of creditors in respect to partnership funds, 241.
  - of seamen in sickness, 351.
  - of seamen to be brought home, 352.
  - and duties, of maker of negotiable paper, 179.
  - and duties of holder of negotiable paper, 179.
  - and duties of indorser, 191, 192.
  - and duties of acceptors, 195.
- RISK, common sea, 340.
  - parties may agree as to, 388.
  - when terminated, 395, 396.
  - rules concerning "hazardous," 410, 411.
- RULES, in respect to passage-money, analogous to those of freight, 334.
  - regulating salvage, 344.
  - governing collision, 349.
  - for steam vessels when meeting others, 349.
  - of pilots, 353.
  - concerning "hazardous" risks, 410, 411.

S.

- SACRIFICE, in average, how justified, 341.
- SALE, is to be immediately followed by payment and delivery, unless otherwise agreed upon, 117.
  - is made when the agreement is made, 117.
  - what constitutes a, 116.
  - distinction between agreement and, 116.
  - every actual, is an executed contract, though payment may remain to be made, 116.
  - executory contract for, is not a present, 116.
  - of goods, in exchange thereof for money, 116.
  - when bargain does, or does not become a, 117.
  - is made when the agreement is made, 117.
  - is not complete so long as something remains to be done to the goods by the seller, 118-120.
- SALE is not necessarily complete on the completion of some time agreed on, or happening of some event, 121.
  - can be done, of chattels or goods not in existence, 121.
  - is none, but for a price that is certain or capable of being made so, 121.
  - when once effected, the buyer has a right to possession, on payment, 121.
  - when avoided by mistake, or defect in subject-matter, 124.
  - when many things bought at one, right of buyer as to refusing a part without all, 125.
  - buyer may have right of re-delivery by terms of bargain, 126.
  - with warranty, 128.
  - of one's business, when good, when void, 133.
  - of notes, when amounting to usury, 306.
  - of ships, how regulated, 321.
  - when made by master under necessity, proceeds must be accounted for by insured, 399.
- SALVAGE, what constitutes, 342, 343.
  - how enforced, 343.
  - proceedings for, 343.
  - what proportion of value for, 344, 345.
  - how distributed among salvors, 345.
- SALVORS, who are, 343.
  - passenger may be, 344.
- SEAL, of deed, is what, 441.
  - notarial, evidence of dishonor of foreign bill, 186.
- SEAMEN, rights of, in sickness, 351.
  - discharge of, without consent, 352.
  - if discharged without their consent, have a right to be brought home, 352.
  - desertion of, how punished, 353.
  - punishment of, 353.
- SEAWORTHINESS, warranty of, 381, 382.
  - standard for, 382.
- SELLER, has a lien on goods for payment, 118.
  - may resell goods on notice given the buyer, if the buyer does not pay in a reasonable time, 118.
  - cannot sell and give good title, if he has only right of possession, 119.
  - liability of, as to keeping goods, 122.
  - obligation of, as to delivery, 122, 123.
  - may annul a sale he was induced to make by fraud, 126.

- Seller not necessarily bound by receipt in deed, 446.
- Sheriff, as to levy and sale by, of partnership interests, 232.
- Ships, are personal property, 318.
  - registration of, 318, 320.
  - transfer of, should be followed by possession, 322.
  - what is meant by, in passing property by sale of, 322.
  - have a lien on goods for the freight, 330.
  - when repaired, contribution for, 337.
  - transfer of property in, 321, 322.
  - conveyances of, recorded, 321.
  - mortgagee of, in possession, liable as owner, 325.
  - employment of, by owner, 327–334.
- Shipper, cannot abandon goods for freight so long as they are in specie, 333.
- Shipping, articles of, 350.
- Ship-Owner, may let his ship to others, 334.
  - must pay for goods lost by his fault, or the fault of his ship, 334.
- Ship's-Husband, is commonly part-owner, 324.
  - powers of, 324.
- Signature, to agreement, when it may be in any part of the paper, 146.
  - to negotiable paper, how it may be written, 169.
- Single Women, how their property may be put safely under trust, and secured to them, in view of their marriage, 60.
- South Carolina, law as to rights of married women in, 55.
  - days of grace allowed and legal holidays in, 206.
  - statute of limitations in, 295.
  - usury laws of, 311.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 744.
  - chattel mortgages regulated by statute in, 661.
  - number of witnesses to wills necessary in, 789.
  - mechanics' liens, abstract of law of, 771.
- Specifications, should accompany building contracts, 92.
- Statute of Limitations. *See* Limitations.
- Statutes, as distinguished from common law, 27.
  - provisions respecting seamen, 350.
  - of frauds, purpose, and provisions, 142–147.
- Stay Laws, abstract of in all the States, 705.
- Stoppage in Transitu, 134.
  - exists only in actual insolvency, 134.
  - must be effected by seller, 135.
  - hindered by possession of buyer, actual or constructive, 135.
  - barred by *bona fide* sale by buyer, 135.
  - a seller exercising right of, does not rescind the sale, but holds the goods as property of the buyer, 136.
- Submission, to arbitrators, may be revoked by either party before award made, 254.
  - other party has damages for revocation of, 254.
- Subscription Papers, law as to them, 100.
- Survey of Vessels, when ordered, 351.

T.

- Tenancy by the curtesy, a law-term, explained, 37.
- Tender, what constitutes a good, 147.
  - lawful, and payment in court, is a good defence to action for debt, 148.
- Tennessee, law as to rights of married women in, 55.
  - days of grace allowed and legal holidays in, 206.
  - statute of limitations in, 296.
  - usury laws of, 311.
  - number of witnesses and acknowledgment required to deeds of land executed in, 541.
  - abstract of laws relating to collection and recovery of debts in, 746.
  - chattel mortgages regulated by statute in, 662.
  - number of witnesses to wills necessary in, 789.
  - mechanics' liens, abstract of law of, 772.
- Termini, of voyage and risk, 394-396.
  - must be distinctly stated, 394.
- Texas, law as to rights of married women in, 56.
  - days of grace allowed, and legal holidays in, 206.
  - statute of limitations in, 296.
  - usury laws of, 311.

TEXAS, number of witnesses and acknowledgments required in deeds of land executed in, 542.
abstract of laws relating to collection and recovery of debts in, 747.
chattel mortgages regulated by statute in, 662.
number of witnesses to wills necessary in, 789.
mechanics' liens, abstract of law of, 772.
THINGS IN ACTION, a law-term, explained, 38.
THINGS IN POSSESSION, a law-term, explained, 38.
TITLE, does not pass by sale to a fraudulent party, 127.
TORTS, this word in law means *wrongs*, and includes all wrong-doing, 32.
are what, 301.
TRADE, contraband, 391.
prohibited, 391.
TRADE-MARKS, protected; and sundry provisions of the statute respecting them, and how they should be described and recorded, given in full, 689.
TRIAL, for salvage, how had, 345.
TRUSTEE PROCESS. *See* RECOVERY OF DEBTS.
TRUSTEES, a law-term, explained, 60.
cannot buy trust property, 219.
may insure against fire, 415.

U.

USAGE, when held unreasonable, 76.
of fire insurance companies, when admitted, 407.
USURY, what is meant by, 300.
law in regard to, 301.
USURY, what is necessary to constitute, 301, 302.
contract for, wholly void, 302.
when sale of notes amounts to, 306, 307.
abstract of the law of in all the States, 308.
UTAH, law as to rights of married women in, 56.
days of grace allowed, and legal holidays in, 206.
statute of limitations in, 297.
usury law of, 311.
number of witnesses and acknowledgment required to deeds of lands executed in, 542.
abstract of laws relating to collection and recovery of debts, in, 748.
UTAH, chattel mortgages regulated by statute in, 662.
number of witnesses to wills necessary in, 789.
mechanics' liens, abstract of law of, 772.

V.

VALUE RECEIVED, effect of these words in negotiable paper, 178.
VALUE of insured goods, how determined, 374.
VALUATION, how applied to insured property, 372, 373.
how understood in fire policies, 422.
mutual companies require a valuation expressed, 422.
determined what the insurers must pay in case of total loss, 423.
VERMONT, law as to rights of married women in, 57.
days of grace allowed, and legal holidays in, 206.
statute of limitations in, 297.
usury laws of, 311.
number of witnesses and acknowledgment required to deeds of land executed in, 542.
abstract of laws relating to collection and recovery of debts in, 749.
chattel mortgages regulated by statute in, 662.
number of witnesses to wills necssary in, 790.
mechanics' liens, abstract of law of, 773.
VESSELS, in danger of collision, duties of, 349.
VIRGINIA, law as to rights of married women in, 57.
days of grace allowed, and legal holidays in, 206.
statute of limitations in, 297.
usury laws of, 311.
number of witnesses and acknowledgment to deeds of land executed in, 542.
abstract of laws relating to collection and recovery of debts in, 750.
chattel mortgages regulated by statute in, 662.
number of witnesses to wills necessary in, 790.
mechanics' liens, abstract of law of, 773.
VOYAGE, in respect to charter-party, 335.
what is the proper course for, 392.
unnecessary protraction of, is a deviation, 393.

VOYAGE may be changed for purpose of saving life, 393.
new voyage substituted for one agreed on is a deviation, 393.
policy never attaches on an entirely new, 394.
ship may visit several ports by permission, on the, 393.
where and when terminated, 394.

W.

WAGES of seamen, how regulated, 351.
who may insure, 376.
of mariners, not insurable, 376.
WAIVER of fraud, when action is brought to enforce the contract, 128.
WARRANTY, general, particular, limited, express, or implied, 128.
mere declaration of opinion is not, 128.
breach of, does not always authorize buyer to return, 130.
provisions sold are always held to be sold with, 131.
what is held to constitute, 128–131.
seller of goods in possession is understood as selling with warranty of title, 130.
thing sold for special purpose is sold with implied, 130.
held not to apply where an ascertained article is bought, 130.
bill of sale, describing articles sold amounts to, 131.
express, in policy, 379.
breach of, 380.
subjects of express, 380.
of sailing, 380.
of neutrality, 380.
implied, 381.
of seaworthiness, 381.
and representation, 417.
part of contract of insurance, 417.
may be of the present or of the future, 418.
continuing, 418.
in case of life-insurance, 435.
deed, clauses in, 447.
in quit-claim deed, 447.
effect of, on subsequent grantees, 448.
WASHINGTON, law as to rights of married women in, 57.
days of grace allowed, and legal holidays in, 307.
statute of limitations in, 298.
usury laws of, 311.
WASHINGTON, number of witnesses and acknowledgment required to deeds of land executed in, 542.
abstract of laws relating to collection and recovery of debts in, 751.
chattel mortgages, regulated by statute in, 662.
number of witnesses to wills necessary in, 790.
mechanics' liens, abstract of law of, 773.
WEST VIRGINIA, law as to rights of married women in, 51.
days of grace allowed, and legal holidays, in, 207.
statute of limitations in, 298.
usury laws of, 311.
number of witnesses and acknowledgment required to deeds of land executed in, 542.
abstract of laws relating to collection and recovery of debts in, 753.
chattel mortgages regulated by statute in, 663.
number of witnesses to wills necessary in, 790.
mechanics' liens, abstract of law of, 774.
WIFE, may always be an agent of her husband, 59.
is his agent, with authority to make purchases on his account, for proper domestic purposes, 59.
loses this authority if she needlessly leaves his house, 59.
if she leaves his house because of his cruelty, she carries with her his authority to make purchases or contracts for her proper support, 59.
if she carries on trade as a single woman when is the husband liable, 59.
when the assent of, is necessary to pass real estate, 444.
effect of, joining in deed with husband, 449, 450.
WILLS, the law of, with forms and directions for making and executing, 776.
WISCONSIN, law as to rights of married women in, 58.
days of grace allowed, and legal holidays in, 207.
statute of limitations in, 298.
usury laws of, 311.
number of witnesses and acknowledgment required to deeds of land executed in, 542.

WISCONSIN, abstract of laws relating to collection and recovery of debts in, 754.
  chattel mortgages regulated by statute in, 663.
  number of witnesses to wills necessary in, 790.
  mechanics' liens, abstract of law of, 774.
WITNESSES, to deed, law and practice of, 442, 443.
  to deeds, number required by statute in all the States, 538.
WYOMING, law as to rights of married women in, 58
WYOMING, days of grace allowed, and legal holidays in, 207.
  statute of limitations in, 299.
  usury laws of, 311.
  number of witnesses and acknowledgment required to deeds of land executed in, 542.
  abstract of laws relating to collection and recovery of debts in, 755.
  chattel mortgages regulated by statute in, 663.
  number of witnesses to wills necessary in, 790.
  mechanics' liens, abstract of law of, 774.

INDEX TO FORMS.

AGREEMENT AND CONTRACT.
- General agreement, sufficient for many purposes, 77.
- General agreement, as used in the Western States, 77.
- General contract for mechanics' work, 78.
- Agreement for purchase and sale of land, in use in the Middle States, 79.
- Agreement for sale of land, in use in the Western States, 79.
- Agreement for warranty deed, used in the Western States, 82.
- Contract to convey real estate, in use in the Middle States, 82.
- Agreement for the purchase of an estate, in use in New England, 84.
- Agreement for the sale of an estate by private contract, 87.
- Agreement to be signed by an auctioneer, after a sale by auction, 87.
- Agreement to be signed by the purchaser, after a sale by auction, 88.
- Agreement to make an assignment of a lease, 88.
- Agreement for making a quantity of manufactured articles, 88.
- Agreement between a trader and a bookkeeper, 89.
- Agreement for damages in laying out or altering road, 90.
- Agreement between a person who is retiring from the active part of a business, and another who is to conduct the same for their mutual benefit, 90.
- Brief building-contract, 92.
- Full and minute building-contract, 93.

APPRENTICES.
- A general indenture of apprenticeship as sometimes used in New England, 35.
- Shorter indenture of apprenticeship, 36.

ARBITRATION.
- Simple agreement to refer, 250.
- Arbitration bond. One or more arbitrators, 256.
- Award of arbitrators, 257.

ASSIGNMENTS.
- Brief form of an assignment to be indorsed on a note, or any similar promise or agreement, 113.
- General assignment, with power of attorney, 113.
- Assignment of a bond, 114.
- Assignment of a bond, with power of attorney, and a covenant, 114.
- Assignment of a judgment, in the form of an indenture, 115.
- Assignment of mortgage, short, 590.
- Assignment of mortgage with power of attorney, 590.
- Assignment of mortgage by a corporation, 591.
- Assignment of mortgage in use in Michigan, 584.
- Assignment of wages, with power of attorney, 115.

ATTORNEY, POWERS OF, AND AGENCY.
- Power of attorney, 223.
- Power of substitution, 224.
- Power of attorney, in a shorter form, 224.
- Full power of attorney to demand and recover debts, 225.
- Power of attorney to sell and deliver chattels, 226.
- Power of attorney to sell lands, 502.
- Power of attorney given by seller to buyer, 226.
- Power of attorney to sell shares of stock, with appointment by attorney of substitute, 226.
- Power of attorney to subscribe for stock, 227.

ATTORNEY, POWERS OF, AND AGENCY.
- Proxy or power of attorney to vote, 227.
- Proxy revoking all previous proxies, 227.
- Proxy with affidavit of ownership, in use in New York, 227.
- Power to receive dividend, 228.

BONDS.
- Simple bond, without condition, 106.
- Bond for payment of money, with a condition to that effect, with power of attorney to confess judgment annexed, 106.
- Bond to be secured by mortgage, 546.
- Bond for conveyance of a parcel of land, 107.
- Bond for a deed of land, with acknowledgment before notary public, 108, 501.
- Bond in another form, for conveyance of land, with acknowledgment, 109.
- Bond to corporation for payment of money due for contribution to capital stock, with power of attorney to confess judgment, 110.
- Bond with warrant in use in Pennsylvania, 565.
- Bond (mortgage) in use in New York, 588.

CARRIAGE OF GOODS AND PASSENGERS.
- Steam packet company's receipt, 274.
- Express company's receipt, 274.

CONTRACT FOR SALE OF LANDS, 501.

COPYRIGHT.
- Agreement between author and publisher; short form, 700.
- Agreement between author and publisher; fuller form, 701.
- Assignment of a copyright, 702.

DEEDS CONVEYING LAND.
- Deed poll of warranty, in common use in New England, 452.
- Deed of gift by indenture, without any warranty whatever, 453.
- Deed of bargain and sale, without any warranty, 454.
- Quitclaim deed, without any warranty, 455.
- Deed poll of release and conveyance; short form, 456.
- Deed with special warranty against the grantor only, 457.
- Quitclaim deed (long form), homestead waiver, 458.
- Deed, with covenant against grantor, without release of homestead or dower, 459.

DEEDS CONVEYING LAND.
- Separate relinquishment of homestead and dower in land sold under execution 461.
- Full warranty deed, by indenture, without release of homestead or dower, 462.
- Warranty deed (short form), with release of homestead and dower, 464.
- Corporation deed, 465.
- Virginia deeds, 466.
- Warranty deed, brief, in use in Arkansas, 468.
- Warranty deed, brief, in use in California, 487.
- Warranty deed, brief, in use in Florida, 468.
- Warranty deed, brief, made under the statute in use in Illinois, 484.
- Warranty deed in use in Kentucky, 467.
- Warranty deed in use in Louisiana, 481.
- Warranty deed in use in Maryland, 486.
- Warranty deed, brief, in use in Minnesota, 480.
- Warranty deed, brief, in use in Mississippi, 472.
- Warranty deed in use in Missouri, 472.
- Warranty deed, brief, in use in Ohio, 478.
- Warranty deed in use in New Jersey, 476.
- Warranty deed in use in New York, 499.
- Warranty deed, brief, in use in North Carolina, 470.
- Warranty deed, brief, in use in Pennsylvania, 475.
- Warranty deed in use in South Carolina, 486.
- Warranty deed made under the statute of West Virginia, 485.
- Warranty deed, brief, in use in Wisconsin, 474.
- Deed of grant with warranty against claimants through grantor, in use in Delaware, 495.
- Deed of grant and quitclaim of property and mining right, in use in California and the mining States, 483.
- Quitclaim deed, brief, in use in Alabama, 498.
- Quitclaim deed, brief, in use in Delaware, 497.
- Quitclaim deed in use in Indiana, 496.
- Quitclaim deed in use in Nebraska, 497.
- Deed in use in Province of Ontario, 530.

DEEDS CONVEYING LAND.
- Deed with mortgage back to secure price, in use in the Province of Quebec, 531.
- Deed with covenants and release of dower in use in the Province of Ontario, 533.
- Deed of grant and quitclaim, 534.
- Deed of grant in use in Prince Edward Island, 536.
- Bond for a deed, 501.
- Contract for sale of land, with penal obligation, 501.
- Power of attorney to sell lands, 502.
- Trust deed for the benefit of a wife, or some other person, 504.
- Trust deed to secure payment of a note, without release of homestead or dower, 505.
- Deed of trust to secure a debt (fuller form), and with release of dower, 507.

GUARANTY.
- Guaranty to be indorsed on note, 140.
- Guaranty of a note on separate paper, 140.
- Guaranty in another way, 140.
- Letter of guaranty, 141.
- Guaranty with collaterals, authorizing sale, 141.
- Guaranty with collaterals, promising additional security or authorizing sale, 141.

INFANTS.
- Promise in writing, 34.

INSURANCE, MARINE.
- Abandonment, 399.

INSURANCE, FIRE.
- Immediate notice of loss, 426.
- Notice, with certificate of magistrate, 427.
- Assignment of a policy to be indorsed thereon, 428.
- Transfer and assignment of policy, 429.

LEASES OF HOUSES AND LANDS.
- Short form of lease, 610.
- Fuller form, with a provision for abatement of rent, 610.
- Short form of lease, in use in the Western States, 612.
- Lease of city property, in use in Chicago, 613.
- Lease with provisions for taxes and assessments, 615.
- Lease, with covenants about water-rates and injury by fire, in use in New York, 617.
- Lease by grant, in use in the Western States, 619.

LEASES OF HOUSES AND LANDS.
- Lease by certificate, with surety, 620.
- Lease of city property, in use in St. Louis, 621.
- What is called a country lease, in use in the Western States, 622.
- A ground lease, 624.
- Assignment of lease, and ground rent, 627.
- Lease containing chattel mortgage covenants, to secure rent, 629.
- A building lease, 632.
- A mining lease, 633.
- Lease of land supposed to contain oil, salt, or other minerals, 634.
- Assignment of a lease, 636.
- Landlord's notice to quit for non-payment of rent; short form, 636.
- Landlord's notice to quit for non-payment of rent; another form, 637.
- Landlord's notice to pay rent due, or quit, 637.
- Landlord's notice to leave at end of term, 637.
- Landlord's notice to determine a tenancy at will, 638.
- Receipt for rent, in use in New York, 638.
- Lease in use in Province of Quebec, 638.
- Lease in use in Province of Quebec, known as private lease, 640.
- Lease, house, in use in Ontario, 643.
- Lease of land in general use, 644.
- Lease of a farm, 832.

LIENS OF MECHANICS AND MATERIAL-MEN
- Notice under mechanics' lien, 758.
- Bill of particulars of mechanics' claim, 759.
- Release and discharge of mechanics' lien, 759.
- Release and discharge of a mechanic's lien, another form, 760.

MARRIED WOMEN.
- Indenture to put in trust the property of a married woman, 60.
- Another form of indenture in trust, for property of unmarried women, 64.

MORTGAGES OF LAND.
- Promissory note, to be secured by mortgage, 546.
- Bond to be secured by mortgage, 546.
- Mortgage, without power of sale and without warranty, but with release of homestead and dower, 547.
- Mortgage, with power of sale, to secure a bond, without release of dower, 548.

MORTGAGES OF LAND.
  Mortgage to secure a debt, with power of sale; short form, 550.
  Mortgage to secure a debt (fuller form), with power of sale, 551.
  Deed poll of mortgage, with power to sell, and insurance clause, and release of homestead and dower, 552.
  Mortgage by indenture, with power of sale, and interest and insurance clause, to secure a bond, 554.
  Mortgage to executors, with power of sale, 557.
  Mortgage of a lease, 559.
  Mortgagee's deed, under a power of sale, 561.
  Mortgage deed without release of dower, etc., in use in Wisconsin, 574.
  Mortgage deed to secure a bond, in use in South Carolina, 569.
  Mortgage to secure a bond with warrant, in use in Pennsylvania, 562.
  Mortgage deed in use in New York, 585.
  Mortgage, with power of sale, in use in Missouri, 573.
  Mortgage deed in use in Maryland, 567.
  Mortgage deed in use in Louisiana, 577.
  Mortgage deed to secure a promissory note, in use in Kansas, 572.
  Mortgage deed, with release of dower, etc., to secure payment of premises sold, in use in Iowa, 576.
  Mortgage deed (short) in use in Indiana, 574.
  Mortgage deed with power of sale, in use in Georgia, 571.
  Mortgage deed in use in Province of Quebec, 597.
  Mortgage deed for general use in the Dominion of Canada, 600.
  Trust deed to secure a debt, payable in gold coin, in use in California, 489.
  Trust deed to secure payment of a promissory note, in use in Colorado, 492.
  Trust deed by way of mortgage, in use in Virginia and West Virginia, 488.
  Mortgage, satisfaction of, in use in New York, 589.
  Mortgage, satisfaction of, in use in New Jersey, 581.
  Mortgage, satisfaction of, in use in Minnesota, 583.
  Mortgage, assignment of, in use in Michigan, 584.
MORTGAGES OF LAND.
  Mortgage, release of, in use in Kansas, 582.
  Deed of trust, release of, in use in Colorado, 581.
  Deed of trust, release of, in use in Virginia and West Virginia, 583.
  Assignment of mortgage, short form, 590.
  Assignment of mortgage with power of attorney, 590.
  Assignment of mortgage by a corporation, 591.
  Discharge of mortgage, short form, 592.
  Release and quitclaim of mortgage, as used in the Western States, 593.
  Discharge of mortgage, as used in the Middle States, 593.
  Discharge and satisfaction of mortgage by a corporation, 594.
  Release of a part of the mortgaged premises, 594.
  Deed extending a mortgage, 596.
MORTGAGES OF GOODS AND CHATTELS.
  Mortgage of personal property, 649.
  Mortgage of personal property, with warranty, 649.
  Mortgage of personal property, with power of sale, 651.
  Mortgage of personal property, with power of sale; another form, 652.
NOTES OF HAND AND BILLS OF EXCHANGE.
  Common form of a bill of exchange, 162.
  Common forms of a promissory note, 163.
  Form of a note secured by mortgage, as used in Illinois, 164.
  Promissory note to be secured by mortgage, 546.
  Form of a note given for a chattel sold, with a condition preserving the ownership of the seller, 170.
  Judgment note, with waiver, 198.
  Judgment note, with fuller waiver and power of attorney, 198.
PARTNERSHIP.
  Articles of copartnership between two tradesmen, 245.
  Short form of articles of copartnership, 247.
  Certificate of a limited partnership, with acknowledgment and oath, 249.
PATENTS.
  Form of petition, 665.
  Specification to accompany a petition, 667.
  Form of oath, 668.

PATENTS.
- Appeal to the examiner-in-chief, 673.
- Petition for re-issue, 677.
- Oath to be appended to application for re-issue, 677.
- Disclaimer by an assignee, 678.
- Application for patents of designs, 680.
- Specifications for designs, 680.
- Form of caveat, 682.
- Assignment of the entire interest in letters-patent before obtaining the same, and to be recorded preparatory thereto, 684.
- Assignment of an undivided interest, 684.
- Grant of a territorial right in a patent, 685.
- Forms of license, 686.

PROTEST.
- Notarial, and notice of, 200.

RECEIPTS AND RELEASES.
- Receipt for money, 150.
- Another form of receipt for money, 150.
- Receipt for papers or other articles, 150.
- General release, 151.
- Mutual general release by indenture, 152.
- Release from creditors to a debtor, under a composition, 152.
- Release of all legacies, 152.
- Release of a bond, it being lost, 153.
- Release of a judgment, 154.
- Release of a condition, 155.
- Release of a covenant contained in an indenture of lease, 155.
- Release in extinguishment of a power, 156.
- Release from a lessor to a lessee (upon his surrendering his lease) from the covenants therein, 156.

RECEIPTS AND RELEASES.
- General release of dower, 157.
- Release of dower to the heir, 157.
- Release of dower in consideration of an annuity given by will, 158.
- Release of dower when the husband of the widow joins in the deed, 158.
- Release of a trust, 159.
- Release of right to lands, 160.
- Release between two traders in settling accounts, 160.
- Release of deeds of trust in Colorado, 581.
- Release of mortgage in Kansas, 582.
- Release of trust deed in Virginia, 583

SALES.
- Bill of sale of personal property, 132.
- Bill of sale of personal property, with a condition to make it a mortgage with power of sale, 132.

SHIPPING.
- Bill of sale of vessel, 355.
- Mortgage of a vessel, 357.
- Charter party, 359.
- Bill of lading, 360.
- Shipping articles in common use, 361.
- Bottomry bond, 364.
- Oath or affirmation of consignee or agent, 365.
- Custom-house power of attorney, 366.
- Maritime protest, 367.
- Steamboat warrant, as used in the Western States, 369.

WILLS.
- A will, 781.
- Copy of a fuller form of, 782.

BAILMENT.

WHERE one person delivers personal property to another, it is called bailment.

The bailor is the person delivering the property. The bailee is the person to whom the property is delivered.

Bailments may be divided into three classes: those which are for the benefit of the bailor or some one whom he represents; those which are for the benefit of the bailee or some person whom he represents; and those which are for the benefit of both the bailor and bailee. In the first class, the bailee is required to exercise only the slightest care and is responsible only for gross negligence. In the second class, he is required to exercise the greatest care and is liable for the slightest neglect. In the third class, he is required to exercise only ordinary care and is responsible only for ordinary neglect.

Where a person undertakes to keep another's goods without pay, if he acts in good faith and looks after the property as if it were his own, he is not responsible for the loss or injury of the goods, and is liable only for bad faith or gross negligence. But, of course, this arrangement can be varied by agreement or by circumstances. On the other hand, a man who borrows goods is responsible for the slightest negligence resulting in injury or loss. Should he use the property he borrowed for any different purpose than that for which it was lent, or permit another person to use it or keep it beyond the time limited, then he is liable for anything that may happen to the property. And he cannot keep the property as a set-off to a claim against the bailor.

The bailee has a right to the possession of the property entrusted to his care, and may sue to recover the property as against everybody but the owner. He can deliver the property only to the owner or some one authorized to receive it for him.

Where he delivers the property to the person who gave it to him under the impression that he is the true owner, the bailee is not responsible to the real owner. The bailee cannot dispute the bailor's title. Common carriers, commission merchants, factors or pledgees, are all bailees who receive a benefit from the bailment, and are therefore bound to exercise ordinary care and diligence. In this connection, see the subject of Common Carriers, at page 258.

A bailee, who has received property or materials to be repaired or manufactured, has a lien upon the property for his service; so have inn-keepers, common carriers, and warehouse men for their charges.

CORPORATIONS: PERSONAL LIABILITY.

Corporations have now almost entirely displaced all other forms of business enterprises. The ease with which they are managed, and the limitation of liability of those participating in them, are probably the reasons for their great popularity and the great increase in their development. All the States in the Union now have extensive statutes regulating the formation and specially governing the actions of corporations. Persons desiring to form a corporation should seek the advice of a competent lawyer, to make sure that all acts have been done according to law and insure against heavy penalties and liabilities. What is of most importance to the average person is a clear understanding of his liability either as a stockholder, an officer, or a director of a corporation. Indeed, few people realize the possibility of losses that may come upon one from the mere assumption of the rights of a stockholder, or the acceptance of a position as an officer or director, in a corporation. Our object here is to (1) give the rights, powers, and duties of a stockholder, and his liabilities; (2) the rights, powers, and duties of a director, and his liabilities; (3) the rights, powers, and duties of an officer, and his liabilities.

In general, the stockholder is legally the man who controls the situation. The right to mortgage real estate, to reduce or increase capital stock, or to remove directors or officers, is almost always in the hands of the stockholders. They have also the right to examine the books, records, and papers of the corporation, and in general can amend or alter the charter. The stockholders elect the directors, and in some instances the officers, and have the power to amend or alter the by-laws.

Liabilities of Stockholders.

The main distinction between a partnership and a corporation exists in the different liabilities of those who take part. A corporation is really an extended partnership, the stockholders representing partners. And the advantage a stockholder has over a partner is soon realized when it is noted that a stockholder, in general, is not liable in his outside property for the debts of an insolvent corporation, except for the amount of the unpaid part of the stock held by him. This is an almost universal rule in the United States. In Arizona, California, Indiana, and Minnesota, a stockholder is liable for a share of the debt proportionate to the total stock owned. In Arizona, a stockholder is proportionately liable unless especially restricted in the charter of the corporation. California and Minnesota, however, exempt manufacturing and mechanical corporations from this rule, and Indiana exempts manufacturing, mercantile, and mining corporations. In Kansas, the liability is equal to the *amount* of stock owned. That is, ten thousand dollars face value of stock makes the owner approximately liable for ten thousand dollars of corporation debts. In Ohio, the rule is the same for all debts contracted previous to November 23, 1903; after that date, stockholders are only liable according to the general rule. In Idaho and Louisiana (as also in Great Britain) a stockholder's liability is only limited where the word "limited" or "ltd." is used as part of the title on the stationery, advertising, official signs, etc. In Delaware, Nevada, and Utah the liability of the stockholder may be extended to any amount fixed upon.

In Florida, Illinois, Iowa, and Nebraska, stockholders are held liable *as partners* if the laws as to the organization of corporations are not strictly complied with.

In every state except Arkansas and California, a stockholder is liable in his private estate for all unpaid balances on his stock. He cannot buy stock on margin and take profits on the face value, and yet escape liability for the remainder if the corporation is insolvent. In Connecticut, a corporation has a lien on the shares, and may sell them on twenty days' notice after twice advertising. But before execution can be levied for stock (or in Massachusetts for any debt), a court judgment must be returned unsatisfied. In Connecticut, Delaware, Massachusetts, Missouri, New York, and North Carolina, the court must be satisfied that the corporation property is insufficient to satisfy the debt. In North Dakota, transfer of stock does not release from liability, nor in Georgia does transfer within six months before insolvency or dissolution of the corporation. In Kentucky and New York, liability ceases two years after transfer; in Maine and Mississippi, after one year. In Nebraska and Illinois it is specifically stated that liability follows the stock in the hands of subscription owners; so that buyers must take special care to have a sworn statement that the stock is fully paid, or make their price to accord. In Illinois, an assignor and assignee are jointly liable; if the assignee has had notice of the fact he is liable alone. In New Hampshire, the liability continues until a sworn statement is filed that the capital stock is fully paid up. In a number of States, the stockholders thus sued for unpaid subscriptions has a right of suit against the other stockholders to enforce contributions from them; to wit: Connecticut, Florida, Indiana, Iowa, Massachusetts, New Jersey, Pennsylvania, and Rhode Island. In New York, the liability of stockholders is only for debts sued for against the corporation within two years after they become due, or for debts that have not more than two years to run originally. In Maine, the liability exists only for debts contracted within one year after the transfer. In Utah, an action must be brought within three years after the facts are discovered.

In several States, employees of a company, or those to whom it is indebted for labor, have an individual lien on the stockholders. These States are Indiana, Massachusetts, Michigan, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, and Wisconsin.

Powers of Directors.

The affairs of every corporation are under the immediate control of its board of directors. Their powers, however, may generally be limited by inserting such limitations in the certificate of incorporation. Ordinarily, directors have the power to elect the officers, and generally may remove them at pleasure. In almost all States the board of directors may fill vacancies in their own board. On the dissolution of a corporation the directors act as trustees of the property; a few of the peculiar provisions follow: In Alabama, the directors may mortgage or convey the property of the corporation without the consent of the stockholders, to secure money borrowed or debts contracted. In Alaska and Arizona, the powers of the directors are fixed by the certificate of incorporation. In Connecticut, it is held that the judgment of the board of directors as to the value of property given for stock is final. In Illinois, the directors have the power to adopt by-laws. In Massachusetts, their powers are entirely dependent on the by-laws. In Missouri, at least three of the directors must be at all times citizens and residents of the State.

Liabilities of Directors.

In general, directors occupy practically the position of trustees, and consequently, any act which they may do contrary to law, or contrary to the provisions of the certificate of incorporation or the by-laws, subjects them to severe penalties. It has been pretty thoroughly decided, however, that in order to hold directors responsible for wrong done, the particular act must be brought home to them that they attended the meeting at which it was decided to do the particular act and voted in favor of doing that act, or that they stayed away purposely, knowing that the question was to be decided at that meeting. It is almost invariably held that directors are personally liable for making unauthorized dividends. They have no right to increase or to reduce the amount of capital stock without the express sanction of the stockholders; and in general, they are personally liable for passing property of the corporation to an individual for the purpose of defrauding creditors. They also incur liability for not making such reports as are provided for by law. A few of the peculiar regulations of the different States are stated below.

In Arizona there are severe provisions against all fraud to creditors, which charge the directors with full knowledge even when absent from meetings. Protection for the director is granted only by his entering his dissent in writing on the minutes, or by resigning.

In California, directors who were absent from any meeting where any illegal act was done can protect themselves by entering their dissent on the record.

In Connecticut, directors are held liable for fraudulent valuation of property taken in payment for stock.

In Delaware, directors are liable for failure to publish certificates of reduction of capital stock. Directors are also liable for loans made to officers of the corporation, or made to stockholders for the security of its stock.

In Illinois, if the corporate debts at any time exceed the amount of the capital stock, the assenting directors are personally liable for such excess.

In Indiana, directors are liable for paying dividends when the company is insolvent, or if the paying of the dividends render it insolvent. To avoid liability, dissenting directors must file their written objection with the County Clerk and with the secretary of the company.

In Maine, directors are subject to a fine not to exceed $2,000, and imprisonment for not less than a year, for voting a dividend to the prejudice of the corporation; and they are also liable to creditors for the amount of the dividend so paid.

In Ohio, the rules for calculating profits are prescribed; and for any violation of these regulations the directors are personally liable to stockholders and creditors for any loss sustained.

Powers and Liabilities of Officers.

The officers are under the immediate control of the board of directors, and are given just the powers that the by-laws and the board of directors delegate to them. Officers can be removed by the board of directors at pleasure; and in order to protect themselves from personal liability for their acts, should invariably ask the board's approval by resolution of what they have done, if they could not obtain it before acting.

In general, the president of the corporation must be a director, and is elected by the board of directors. It is thus specified in Arkansas, Missouri, Montana, Michigan, Massachusetts, Indiana, Nebraska, Nevada, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Colorado, and Connecticut.

In Delaware, the officers may be elected by the board of directors or by the stockholders, as the by-laws prescribe.

In Indiana, officers are liable for issuing stock as full paid when in fact it is not so. Officers hold office until their successors are chosen. Invariably, the officers who make false statements or file false reports are held liable to the persons injured by reason of these reports.

EMPLOYERS' LIABILITY ACTS.

At common law, where an employee was injured by the act or omission of another employee engaged on the same work, the employer was generally held not liable. This is still the rule in States which have not passed what is known as "Employers' Liability Acts." It was to obviate this apparent injustice that these acts have been passed. The "Pioneer Act" is an English one of 1880; and the subsequent acts which have been passed in several different States of the Union, Australia, and portions of Canada, are all modeled after it. They substantially provide as follows:

1. If an employee, using due care and diligence, is injured

a. By reason of any defective condition of ways, works, or machinery connected with or used in the business of the employer, which defect had not been discovered or remedied owing to the negligence of the employer, or of any person in his service whose duty it was to see that such ways, works, or machinery were in a safe condition, or

b. By reason of the negligence of any person in the service of the employer who is entrusted with, or whose principal duty is that of, superintendence; or in the absence of such superintendent, the negligence of the person undertaking such superintendence with the authority or consent of the employer, —

The employee, or in case of fatal injury, the employee's executor or administrator (where a husband, wife, or next of kin survives), has the same rights of compensation and remedy against the employer as if the employee had not been in the service of the employer nor engaged in his work.

2. No action for recovery or compensation shall be had unless notice of the time, place, and cause of injury is given within one hundred and twenty days, and action started within one year. This notice must be in writing, and signed by the party injured or by some one authorized by him.

3. If the employee dies before giving notice as above provided, then the executor or administrator has sixty days from the time of his appointment in which to serve the above notice. The notice should be served by leaving the same at the residence or

place of business of the employer, or may be served by mail properly addressed to the employer.

The employee is presumed to have assumed the necessary risks and no others. Whether he assumed the risk in question, is a question of fact for the jury. Where an employee discovers a defect, and fails to give notice of the same to the employer or superintendent within a reasonable time, he can have no recovery if injured thereby, unless it appears that the employer or his superintendent knew of the defect. It is generally provided that an employer may set off in mitigation of damages a proportion of the sum which he may have contributed towards insurance of the employee.

Practically all of the "Employers' Liability Acts" expressly include railroads. In New York there is a separate act. (The Federal Act of June 11, 1906, which affected only railroads, has been pronounced unconstitutional by the Supreme Court; it was generally similar to the above, except that it had an additional clause holding that where the employee is guilty of contributory negligence, but his negligence is slight and the employer's negligence is gross, the employee shall still have his recovery.) The comparative question of negligence is one for the jury.

The statutes of Alabama and Massachusetts are practically similar. Notice there must be given within sixty days, and the action commenced within one year.

Indiana has the same general rule, but without any time of limitation for the commencement of the action.

In Colorado, it is provided that where the injury results from the negligence of a fellow employee, recovery is limited to five thousand dollars. Notice to the employer must be given within sixty days, and the action commenced within two years.

In Illinois and Georgia, the Federal rule regarding slight negligence, as noted above, is followed.

While the statutes abrogate the common law, and accordingly, should be construed strictly, nevertheless the courts are inclined to look to the purpose of the act, and in general, give a liberal construction. The interpretations placed upon the various words and phrases, of course, vary somewhat in different localities; and it would be impossible here to enter into all the different shades and varieties of opinion which the courts have set up.

PURE FOOD AND DRUG LAW.

Being Chapter 3915 of the First Session of the Fifty-ninth Congress, June 30, 1906.

This is a law, passed to regulate the traffic in foods and drugs, whether manufactured in the United States, or imported from a foreign country to be used in the United States.

The term "drug" includes all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" includes all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

Any person violating the provisions of this act is guilty of a misdemeanor, and for each offense is subject to a fine not exceeding five hundred dollars or one year's imprisonment, or both fine and imprisonment, in the discretion of the court; and for each subsequent offense is subject to a fine of not less than one thousand dollars or one year's imprisonment, or both fine and imprisonment, in the discretion of the court.

An article shall be deemed adulterated,

In the case of drugs:

1. If, when sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined there. *Provided,* that no such drug shall be deemed adulterated if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof.

2. If the strength or purity fall below the professed standard or quality under which it is sold.

In the case of confectionery:

If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient harmful to health, or any vinous, malt, or spirituous liquor, or compound or narcotic drug.

In the case of food:

1. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any substance has been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

5. If it contain any added poisonous or other harmful ingredient which might render such article injurious to health; *provided* that where substances are added to the preparation which can readily be removed by external mechanical means, and the directions for removal are printed plainly on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

6. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

The term "misbranded" shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced.

An article shall also be deemed misbranded in the case of drugs:

1. If it be an imitation of, or offered for sale under the name of, another article.

2. If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall

have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucance, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

In the case of food:

1. If it be an imitation of, or offered for sale under the distinctive name of, another article.

2. If it be labeled or branded so as to deceive the purchaser, or purport to be a foreign product when it is not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents put in the package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucance, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

3. If in package form where the contents are stated in weight or measure, and not plainly and correctly stated on the outside of the package.

4. If the package containing a substance, or its label, should bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; *Provided*, that an article of food which does not contain any added poisonous or harmful ingredients shall not be deemed to be adulterated or misbranded in the following cases:

a. In the case of mixtures or compounds which may now or hereafter be known as articles of food, under their own distinctive names, and which are not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

b. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale; *Provided,* that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; *And further,* that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

c. A guaranty obtained by a dealer from the wholesaler, jobber, or manufacturer, that the articles which he purchases from them are not adulterated or misbranded within the meaning of this act, shall protect the party making the sale of such articles from any fine or penalty.

Any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one State, Territory, district, or peninsular possession, to another for sale, or having been transported remains unloaded or unsold, or if it be offered for sale, or if it be imported from a foreign country for sale, or intended for exportation to a foreign country, is liable to be seized and confiscated, and may be destroyed or disposed of, and the proceeds, less the costs, paid into the treasury of the United States. But the owner may prevent such confiscation or sale by a good and sufficient bond that such articles are not to be sold or otherwise disposed of contrary to the provisions of this act.

The Secretary of the Treasury shall deliver to the Secretary of the Board of Agriculture, from time to time, samples of foods and drugs which are being imported in the United States for sale, or offered for exportation; and if found adulterated or misbranded within the meaning of this act, or dangerous to health, may refuse admission; but pending the decision on this matter, the goods may be delivered to the owner on the deposit of a good and sufficient security.

It is provided that the act or omission of an agent, if within the scope of his authority, shall be deemed the act of the person or corporation whom he represents.

This act took effect the 1st day of January, 1907.

GLOSSARY

OF

LAW TERMS IN COMMON USE

A.

Abandonment. A surrender of rights to property, or of property, by one person to another. Used in marine insurance, when the insured, having been paid as for a total loss, abandons what is left or saved of the property to the insurers.

Abate. Literally, to throw down. Applied principally to nuisances, and then means their prostration or removal.

Abet. One abets another to commit a crime, by encouraging, commanding, procuring, or counselling him thereto.

Abduction. Forcibly taking away or detaining a man's wife or child.

Abscond. To go out of the jurisdiction of the courts, or conceal one's self, for the purpose of avoiding their process.

Acceptance. The reception of something offered by another with the purpose of retaining it; or of an order given by another. See chapters on Agreements, Sales, and Notes and Bills.

Accession. The right by which one holds all of one's own property together with all of that which has become united to it, naturally or artificially.

Accessory. In criminal law, means one who is concerned in the perpetration of an offence, before the fact, by procuring, counselling, or commanding another to commit it; or, after the fact, one who, knowing the crime to have been committed, relieves, comforts, or assists the criminal.

Accretion. The increase of real estate by portions of soil that are added to it through the operation of natural and gradual causes.

Accrue. To grow from, or to be added to, as interest accrues on the principal.

Acknowledgment. The act of declaring an act or deed to be his by one who executed the same. There are various ways of making an acknowledgment. See chapter on Deeds Conveying Land, and forms annexed thereto.

Act of God. An accident which arises from a cause that operates without the interference of or aid from man. See chapter on Carriage of Goods.

Action. Literally, a doing of any thing. In law, it means a demand, made according to the rules of law, in a court of justice, of property, or a right to property, from some other person. The word "suit" is sometimes used in the same sense.

Ad Litem. Literally, for the suit. Every court has power to appoint a guardian for the suit for one who needs such assistance.

Adjournment. Literally, putting off to another day. Generally applied to assemblies, who either adjourn without day or finally, or else to a day then or previously determined.

Administrator and **Administration.** See chapter on Executors and Administrators.

Admiralty. A court of admiralty has a large and, for some purposes, an exclusive jurisdiction over maritime causes, civil or criminal.

Adultery. Sexual intercourse of a married person with a person who is not the criminal's husband or wife.

Advancement A gift from a parent to a child by anticipation of the whole or some part of what that child would naturally inherit on the death of the parent.

Adverse Possession. Possession or enjoyment of land under such circumstances as indicate that the land is claimed and enjoyed as the possessor's. If such possession has been continued for twenty years, the law generally raises the presumption that it was rightful.

Advocate. One who assists or makes a plea or an argument for a party to an action in court.

Affinity. The connection or relation caused by marriage between each of the married persons and the kindred of the other.

Affirm, Affirmation. They who have conscientious scruples against taking an oath are now generally permitted to affirm, "under the pains and penalties of perjury;" the affirmation being substituted for the oath.

Agency. See chapter on Agency.

Alias. Means, literally, otherwise, or at another time. A man is said to be named John Smith, *alias* Richard Roe; and if an execution is returned unsatisfied, an *alias* execution is issued.

Alibi. Presence in a place different from that before described or alleged; as, when a man charged with an offence committed at a certain time and place proves an *alibi;* that is, that he was somewhere else at that time.

Alien. A person of foreign birth.

Alimony. Legally decreed support of wife by husband after separation.

Allegiance. The obligation or duty which holds a citizen or subject to his government or sovereign.

Alluvion. The increase of earth on the shore of the sea or the bank of a river, caused by the water, acting slowly and gradually. If the increase is sudden and violent, and the land can be traced back to that from which it is torn, it is said to belong to the original owner.

Ambassador. One sent abroad by some sovereign, prince, or State on public business. Public ministers are of different ranks. First, ambassador; then, minister plenipotentiary and envoy extraordinary; then, minister resident; then, *chargé d'affaires.*

Ambiguity. Literally, doubtfulness. If it be *latent*, that is, only discovered by evidence bearing on an instrument, it may be cured or explained by evidence; if it be *patent*, that is, apparent on the face of the instrument, it cannot be explained by evidence, but makes the instrument inoperative as far as the ambiguity extends.

Ancestor. In law, one who has preceded another in a direct line of ascent.

Annuity. A sum of money which is to be paid to another for a certain term. When this annuity is charged upon land, it is called a rent-charge.

Antenuptial. This word is applied to bargains and settlements made before and with a view to an expected marriage.

Appeal. The removal of an action at law from an inferior court to a higher court by a party seeking a review or new trial. The party appealing is the appellant, the other party is the appellee. For the use of the word in deliberative assemblies, see Rules of Order.

Appraisement. An accurate valuation of property. This word is mainly used in probate matters.

Apprentice. See chapter on Apprenticeship.

Appropriation. See chapter on Payment.

Approver. A word much used in English criminal law, but not so much in this country. It means one who confesses himself guilty of a crime, and accuses others for the purpose of saving himself. Here such a person is commonly said to be or to give State's evidence.

Appurtenances. Things which belong to another or principal thing, as incident to the principal thing, and which pass or go with the principal thing when that is conveyed or transferred. Mainly applied to land, but sometimes to a ship.

Aristocracy. A government in which a class of men have supreme and exclusive authority.

Arraign. A prisoner is arraigned when he is called to the bar of a court to answer the charge in the indictment or complaint.

Array. The whole number of persons who are summoned to court to serve as jurymen. From the whole array are selected those who serve on the several juries.

Arrest. The seizing of a person, and depriving him of his liberty, by legal authority and process.

Arson. The malicious burning of the house of another person. Some part of it must be burned; but the word "house" here comprehends all out-houses, such as barn or stable, cow-house, and the like, which belong to the house, and are within the *curtilage*, or the common fence, which includes them all.

Articles. The specific divisions of a document or instrument, written or printed. Thus the name was given to the articles of confederation which preceded our Constitution. Articles of impeachment are the specific allegations charged against the impeached. Articles of partnership are the specific agreements of the parties. Articles of war is the name given to the code of laws, established for the government of the army, and to that for the government of the navy.

Assassination. Is, in law, murder committed for hire, and with no personal cause moving from the murdered to the murderer.

Assault. An illegal and forcible attempt or offer to do a bodily harm to another.

Assign. To transfer or make over to another. See chapter on Assignments.

Assurance. Same as insurance; so of Assured and Assurer. Also, sometimes, an instrument which confirms the title to an estate.

Attainder. Sentence of treason by a governing body without judicial trial, with forfeiture of property and of right of transmitting by inheritance.

Attorney. One who has been put by some person in his place or stead, with authority to manage some business for him. See chapter on Agency. An attorney-at-law is an officer in a court of justice who has been admitted to practise there.

Authorities. The decisions of courts which are referred to as declaring or confirming some point of law.

Authority. The delegation of power by a principal to some person as his agent or attorney. See chapter on Agency.

Average. A term mainly used in marine insurance. A general average loss is, in insurance and shipping law, a loss purposely incurred or sustained for the common benefit of the ship, freight, and cargo; all three of which interests contribute to make up the loss, in proportion to their respective values incurring the same danger and escaping from it. Particular average is a loss on either the ship, the cargo, or the freight, and is borne by the owner or insurer of that interest; it is often called a partial loss.

Award. See chapter on **Arbitration.**

B.

Bail. This word commonly means those persons who become sureties for the appearance of a defendant in court, and to whom he is delivered. The powers of bail over a defendant are very great. When they are provided with the proper instrument from the court, they may arrest him wherever he is, although in a different State, or whatever he may be employed about, even on Sunday, and may do whatever is necessary to get at him; and they may command the assistance of the sheriff and other civil officers.

Bail-bond. This is the bond by which the bail become securities for the defendants. Our Constitution prohibits the requiring of excessive bail.

Bailment. The putting something into the hands of another, or delivering it to him. The bailor is he who delivers; the bailee, he to whom delivery is made. If the bailment be for the exclusive benefit of the bailor, the bailee is responsible only for injury happening from his gross negligence; if it be for the exclusive benefit of the bailee, he is responsible for slight negligence; if for the benefit of both parties, he is responsible for ordinary negligence, or the absence of ordinary care.

BANK-NOTE, OR BANK-BILL. See chapter on NOTES AND BILLS.

BANKRUPT. One who has been judicially declared to be unable to meet his liabilities. There is a national bankruptcy law. Should it be at any time repealed by Congress, procedure could be made under the insolvent laws of each state.

BANNS OF MATRIMONY. A public notice or declaration of the intention of a man and woman to marry each other; the purpose being, that persons objecting to the marriage may have an opportunity to interpose their objections before the marriage takes place.

BAR. A bar to an action is a perpetual and sufficient obstacle. The word also means the whole collective body of the members of the legal profession in a county, city, or State.

BARGAIN AND SALE. This phrase is applied in law to a contract between two parties, by which land is sold and transferred.

BARRISTER. This name is given in England originally, and was formerly given in this country, to lawyers admitted to the bar, or to conduct and argue cases in court; but it is not now much, if ever, used in this country.

BASTARD. One who is born of an unlawful connection; an illegitimate child. In many of our States, a child of parents who afterwards marry and acknowledge him or her as their own is legitimated.

BATTERY. Any unlawful beating or personal violence, however slight. Spitting in one's face may be a battery.

BED. The bed of a stream is that part between the banks which is occupied and covered by the water when it does not spread over and beyond its banks.

BENEFIT OF CLERGY. In England, a clergyman was exempt from the punishment of death; and in ancient times, any one who could read was entitled to this benefit.

BEQUEATH. See chapter on DISPOSAL OF PROPERTY BY WILL.

BIGAMY. The knowingly marrying a second time when a former marriage still exists.

BILL. A complaint in equity or chancery addressed to the chancellor, or to a court of equity, and containing the particulars of the action.

BILL (legislative). A draft of a proposed statute before a legislature.

BILL OF EXCHANGE. See chapter on NOTES AND BILLS.

BILL OF LADING. A receipt for the carriage and delivery of goods, to be carried by sea, for a certain freight. See chapter on CARRIAGE OF GOODS.

BLASPHEMY. In law, any false statement or language intended as a reviling of God.

BLOCKADE. The actual investment of a place by an enemy with a force sufficient to cut off communication, or make it difficult and hazardous.

BONA FIDE. In good faith; honest.

Bond. A written and sealed obligation. See chapter on Bonds.

Bottomry. A kind of mortgage of a ship, for money borrowed. It pledges the ship with extraordinary interest, the lender losing his money if the ship be lost.

Bought and Sold Notes. Memoranda in writing given by a broker who has made a sale, to him for whom the broker sells, and to the buyer, describing the goods and stating the terms of the sale.

Breach In the law of contracts, is the violation of an agreement or obligation.

Burglary. The breaking and entering the house of another in the night-time, with the intent to commit a felony therein.

By-laws. Every corporation has a right to make rules for its own government; and these are by-laws; sometimes spelled bye-laws.

C.

Capias. This is the name of a writ, by which a sheriff is ordered to take a person into his custody, and do with him what this writ requires. It is of many kinds.

Caveat. A Latin word, meaning "let him beware." This word is principally used in patent law, where one proposing to take out a patent subsequently, may file a *caveat*, that no person may in the mean time obtain a patent for the same thing.

Chancellor. A judge who presides over a court of chancery or equity.

Charter-party. A contract by which the owner of a vessel lets the whole or a part of her to another person for a particular voyage, or a particular time, for the conveyance of goods.

Chattel. This word commonly means goods of any kind, or every species of personal property.

Chattels Real. Interests annexed to or concerning real estate, less than a freehold; as a lease for years.

Check. See chapter on Notes and Bills.

Chose in Action. The right to demand and recover a debt or money. This word is sometimes applied to the evidence of the right, as bills of exchange, promissory notes, bank-bills, and other instruments.

Civil Law. By this phrase is usually meant the system of law of ancient Rome.

Clearance. A certificate which the collector of a port gives to the master of a vessel, stating where it is bound to, and that he has entered and cleared the vessel according to law. A vessel found at sea without a clearance may be legally taken and brought into some court for adjudication.

Code. A body of law intended to embrace and regulate all the rules of law, as far as they are within its scope.

Codicil. A little will which adds to or modifies a former will, but does not repeal it.

Collision The striking together or running against each other of vessels.

Collusion. A fraudulent agreement between two or more persons to deprive another of his rights of property.

Common Carriers. See chapter on Carriage of Goods.

Common Law. The system of law prevailing in England and this country, on the authority of usage, or the decisions of courts, and not on statutes. That which depends on statutes is called statute law.

Commorant. Residing or dwelling in a certain place.

Competency. The legal fitness of a witness to give evidence on the trial of an action.

Compound Interest. See chapter on Interest.

Compounding a Felony. Agreement, for a consideration, not to prosecute a criminal.

Condonation. Conduct by which husband or wife is held to have pardoned matrimonial offenses of the other partner, and is therefore barred from suit for separation; as resuming conjugal relations after a known adultery.

Confidential Communications. A counsellor, solicitor, or attorney cannot be compelled to exhibit papers or disclose communications received by him in his official capacity.

Confiscate. To appropriate property to the use of the State which has been forfeited by some offence.

Consanguinity. Relationship by blood.

Consideration. See chapter on Agreements.

Contingent. That which will come upon the happening of an event which may or may not take place. The word is applied to legacies, damages, and remainders, which words see.

Continuance. The adjournment of an action, or the trial thereof, from one day or one term to another.

Contribution. If two or more persons are liable jointly for a debt, and one is compelled to pay the whole, or more than his share, he may call upon the others to contribute their proportion.

Conveyance. The transfer of lands or vessels from one person to another.

Conveyancer. One whose business it is to draw instruments of conveyance.

Copyright. The exclusive privilege of printing, publishing, and selling copies of copyrighted books, writings, drawings, and sundry other similar things, which the law of copyright describes.

Coupons. From a French word, meaning to cut. They are little papers attached to bonds or other instruments, each one promising to pay the interest due on certain days, and it is cut off and presented for payment when due.

Covenant. See chapter on Deeds.

Cross-examination. Examination of a witness by a party who did not call him. A party who calls a witness on a trial examines him in chief; and when he has finished, the other party has a right to cross-examine him.

D.

Damages. The sum claimed or recovered by one who has sustained an injury in person, property, or rights, from him who has caused the injury.

Declaration. A specification filed in an action, stating the circumstances on which the plaintiff founds his claim.

Dedication. This word means, in law, an appropriation of land to a public use, either by deed or declaration, or by acquiescence for a sufficient time in the public use.

Deed. See chapter on Deeds.

Defeasance. An instrument which defeats the force and effect of some other instrument, on some condition or contingency. If a deed be made of land, and a deed of defeasance received back, the two together make a mortgage. See chapter on Mortgages.

Demesne. Lands which the owner holds in absolute property, and not of another.

Demise. A conveyance of land. This word is also sometimes used as synonymous with death; as the demise of a king.

Demurrer. A plea or allegation by a party to an action, that, even if the facts be truly stated by the other party, they do not give him any cause of action, or any good defence.

Denizen. An alien born, who has letters-patent from the sovereign which give him the right of a subject. In this country the word "citizen" is almost exclusively used.

Deposit. A delivery of goods, to be kept for the benefit of the depositor, and subject to his order, without compensation.

Deposition. The testimony of a witness, which has been reduced to writing in accordance with the requirements of law.

Derelict. Deserted; abandoned. Applied in law principally to vessels deserted by their crew, with no purpose of returning

Descent. Succession from parents or ancestors. Rules of descent in case of intestacy are provided by State Statutes.

Detainer. Keeping goods or other property from the owner against his will; or holding a person against his will.

Deviation. In the law of marine insurance, means a departure from or variation of the risks insured against by the policy, without sufficient cause.

Disbar. To expel from the bar one who has been admitted to practice within it.

Dishonor. In commercial law, means the non-payment of negotiable paper when it is due.

Distress. The process made use of for enforcing the payment of rent, or other dues, by the taking of personal chattels from the non-payer. Also Distraining.

Domain. The estate or land lying about a mansion-house, and attached to it.

DOMICILE. See chapter on LAW OF PLACE.

DOMINANT. See SERVIENT.

DORMANT. See chapter on PARTNERSHIP.

DOWER. A widow has her dower, which means an estate for life in one-third part of the lands or tenements of her husband.

DRAWBACK. An allowance or return made by government to merchants, on the re-exportation of certain goods liable to duties and entitled to drawback.

DRAWER, DRAWEE, DRAWING. For these words see chapter on NOTES AND BILLS.

DUE-BILL. A mere acknowledgment in writing of a debt.

DURESS. Personal restraint or compulsion, or fear thereof.

E.

EARNEST. The delivery and acceptance of a part of the price of goods sold, to show that the parties are in earnest and to make the contract binding.

EASEMENT. A right which the owner of one parcel of land has over the land of another, for some special purpose, as air, light, way, or drainage.

EMBEZZLEMENT. Fraudulently appropriating to one's use property with which the party has been intrusted.

EMBLEMENTS. The right of a tenant, when his tenancy has ended, to return and take and carry away the product of land which he planted during his tenancy.

EMINENT DOMAIN. See chapter on that subject.

ENACT. To make a law, or establish by law. Laws usually begin, "Be it enacted."

ENFRANCHISE. To give to any man freedom in a society or body politic.

ENTAIL. An estate is entailed when it is limited or restricted to a particular class of issue, and not to the heirs general.

EQUITY. A branch or method of remedial justice, administered in courts of equity. This was originally administered as the court thought just and reasonable in any case; but the system of equity law is now as well defined and exact as that of common law.

EQUITY OF REDEMPTION. See chapter on MORTGAGES.

ESCHEAT. A reverting of lands to the government, on the entire failure of heirs of a deceased owner.

ESCROW. A deed which is delivered to a stranger, for him to deliver to the grantee therein named, on the happening of certain conditions.

ESTATE. This word means, in law, the kind, quantity, and extent of interest which a person has in real property; as the estate in fee, when he owns it absolutely, or an estate for life, or an estate for years.

EVICTION. Depriving a person of the possession of lands or tenements by judgment of law.

EVIDENCE. All the means by which any matter of fact that is alleged is established, or is disproved.

Excise. Tax paid on the retail sale, or on the consumption of, certain commodities.

Experts. Persons who are selected by the parties in a case, to give evidence on some point by reason of their peculiar knowledge or skill therein.

Extortion. Is, in law, the unlawful taking by an officer, of money, or any thing of value not due to him, by an abuse of his office.

Extradition. The surrender or delivery by one sovereign State to another of persons charged with the commission of crime, within the jurisdiction of the requesting State. Extradition between our States is regulated by the national constitution and laws. We have also treaties of extradition with many foreign States.

F.

False Imprisonment. An unlawful restraint of a man's liberty, in any place, or by any means whatever, even by words only.

Fee-simple. The largest estate a man can have in land. He can dispose of it at his pleasure, and when he dies, it goes to his heirs or devisees.

Fee-tail. An heritable estate, which is limited to certain classes of heirs of the body.

Felony. In the law of this country it means generally any great crime. In some States it is defined by statutes.

Feme Covert. A married woman.

Feudal Law. Sometimes spelled feodal law. A system of tenures, by which real property was held in western Europe during the Middle Ages, and which has remained there to some extent to the present day, although for the most part abolished.

Fiduciary. A fiduciary estate or property is that which a person holds in trust for some other person, who is the beneficiary.

Firm. This word sometimes means the name under which the members of a partnership transact business, and sometimes means the members who compose the partnership.

Flag. By a statute of 1818, the flag of the United States consists of thirteen horizontal stripes, alternate red and white, while the Union (or that part of the flag in the corner of it) was to have twenty stars, with one star more for every State admitted thereafter.

Foreclose. Literally, to shut or bar out. It is used in law to describe a process made use of for the purpose of putting an end to an equity of redemption.

Foreign Attachment. As commonly used, this means the process by which a creditor gets the property of his debtor placed by him in the hands of another; or money due from that other to his debtor.

Fornication. Sexual intercourse of an unmarried person with a married or unmarried person.

Franchise. A privilege, or right, conferred by grant from government upon individuals.

Fraud. The unlawful appropriation of the property or rights of another, knowingly and designedly.

Freehold. An estate of inheritance or for a life; a larger estate than an estate for years or at will.

Freight. Means, in maritime law, either the amount paid for the carriage of goods, from one port to another, or the goods which are so carried.

Fugitive from Justice. A criminal who seeks to escape punishment by fleeing from the jurisdiction within which the crime was committed.

Fungible. An article loaned, but to be consumed by the borrower, as food, clothing, and the like.

G.

Garnishee. One who has in his hands money or property belonging to a defendant, and attached by a process of foreign attachment.

Gift. A transfer of property without consideration, and legally needing none.

Good-will. The benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.

Goods and Chattels. This word in contracts includes, with all personal property in possession, *choses in action*, and chattels real.

Grant. A word which is applicable to all transfers of real property.

Ground-rent., A rent which the owner of unimproved land reserves when he leases the land to be built upon.

Guaranty. A promise or undertaking to answer for the liability of another. Guarantor is he who makes the guaranty; the guarantee is he to whom the guaranty is made.

Guest. A guest at an inn is distinguished from a boarder, in that he makes no contract to remain or pay for a certain time. If he make such a contract, he is not a guest, but a boarder, although at an inn; and the innkeeper is not liable for loss or injury to his goods without the innkeeper's fault. He is so liable to a guest.

H.

Half-blood. The degree of relationship existing between those who have the same father or the same mother, but not both.

Hearsay Evidence. A statement which a witness makes of what he was told by some other person, or heard him say, but does not know himself.

Heir. In this country the word is applied to all persons who are called to the succession of property.

Heir-apparent. One who must succeed to the inheritance, provided he outlives the ancestor.

Heir-presumptive. One who will succeed to the inheritance if he outlives the ancestor and no person is born before the ancestor's death who has a nearer claim.

Hereditament. Any thing capable of being inherited.

Highway. A street or road, or way by land or water, which all citizens have a right in common to use.

Homestead. In this country, that portion of land belonging to the same owner, which the law exempts from liability to debt

I.

Illicit. That which is forbidden by the law.

Impeachment. Criminal trial of high public officers by special procedure.

Impertinent. This word means, in law, matters introduced into any proceeding in a suit which are not properly before the court in that stage of the proceeding.

Imposts. Duties or taxes laid upon imported goods or merchandise.

Indemnity. Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

Indenture. A written and sealed instrument between two or more persons, each of whom has a copy. It is distinguished from a deed-poll, which is made by one person only.

Indictment. A written accusation, made by the government through the proper officer, and presented as true by a grand jury.

Indorse, Indorsement, and **Indorser** (sometimes spelled endorsement). See chapter on Bills and Notes.

Infant. In law, is one under the age of twenty-one years. See chapter on Infants.

Information. A complaint or accusation against a person, charging him with some offence, presented to a court having jurisdiction by a proper officer. It differs from an indictment in that it does not require the intervention of a grand jury.

Infringement. In patent law, means the act of violating the right secured by a patent or copyright.

Injunction. A prohibitory writ, issued by a judge or court having jurisdiction, forbidding the doing of some specified act.

Inquest. A body of men authorized by law to inquire into certain matters. A grand jury is often called the Grand Inquest.

Insolvency. In this country, means much the same as bankruptcy; inability to pay one's debts.

Insurance. By a contract of insurance, the insurers, for an agreed premium, promise to indemnify the insured against loss by marine perils, or by fire, or accident, or the death of a life-insured.

International Law. That system of rules which Christian and civilized States acknowledge to be binding upon them in their conduct towards each other, and to the subjects or citizens of each other. It is founded upon moral right, and not upon any controlling and sovereign authority.

INTESTATE. One who dies without a valid will.

INVENTION. In patent law, signifies, strictly, the finding out and making of something which is new, or which will accomplish a new use.

INVOICE. In commercial law, signifies a paper which describes the merchandise sent by consignors to consignees, with marks or numbers designating each package

ISSUE. In the law of descent and distribution of property, includes all those who have descended from the common ancestor. In pleading, this word means a single and certain point material to the action affirmed by one party and denied by the other.

J.

JETTISON. Sometimes called jetsam. The throwing overboard of a part of the cargo to relieve the vessel. Sometimes it means the things so thrown over.

JOINTURE. An estate or interest in lands or tenements which will take effect when the husband dies, for the benefit of the wife, and during her life.

JUDGMENT. The final conclusion, or decision, or sentence of the law, pronounced by a competent court, as the final result of proceedings instituted therein.

JURISDICTION. The right and power of a court lawfully to hear and determine the cause before it, and enforce the execution of their judgment.

JUSTICE. As a title, is used in the United States as synonymous with judge.

L.

LACHES. Negligence.

LANDLORD AND TENANT. See chapter on LEASES.

LAPSED LEGACY. A legacy lapses if the legatee dies before the testator, that is, it becomes void, unless the legacy is in words of inheritance, as to A B and his heirs, in which case it survives to the heirs.

LAW-MERCHANT. The body of rules and usages in force in matters of commerce.

LEASE. See chapter on LEASES.

LEGITIMATE CHILDREN. Those born in wedlock.

LEVY. This word means to raise, as to levy a tax; or to begin, as to levy war. In practice, it commonly means the obtaining the money for which an execution has been issued.

LIBEL. *Published* words or pictures injurious to another or society.

LIEN. A hold which one person has upon the property of another by way of security for a debt or claim.

LIMITATIONS. See chapter on LIMITATIONS.

Liquidate. To pay; to settle an account. Liquidated damages are damages agreed upon in anticipation of the breach for which they shall be paid.

M.

Malfeasance. The doing of some injurious act, which the party had no right to do.

Malicious Prosecution. A civil or criminal suit, instituted maliciously and without probable cause.

Mandamus. A writ issued by the highest court of general jurisdiction in a State, ordering some person, corporation, or inferior court to do the thing therein specified, which belongs to their office or duty.

Manifest. A written statement of a cargo of a commercial vessel. It is required by law in this country.

Manslaughter. The killing of another, which is unlawful, but without malice aforethought.

Manumission. Making a slave free.

Market Overt. An open or public market, legally constituted. It is nearly unknown in this country, or rather every store, shop, or place of sale is a market overt here.

Mayhem. Depriving a person with force, and unlawfully, of a member, the loss of which makes him less able to fight with an adversary; as his eye, hand, finger, or foretooth. The common word *maim* is derived from this, but has a less limited meaning.

Mayor. The chief executive magistrate of a city.

Mesne. Middle or intermediate. Mesne profits are those which a man draws from an estate from the time that he obtained possession to the time when he was evicted, by one having a better title.

Misdemeanor. This word includes offences punishable by indictment, and inferior to felony; such as perjury, conspiracy, libel, and battery.

Misfeasance. The doing in a wrongful and an injurious way an act which might lawfully be done in a proper manner.

Misrepresentation. This word signifies, in law, a statement which a party to a contract makes concerning it, and which he knows to be untrue.

Moiety. The half of a thing.

Monition. A process like a summons, used in this country in admiralty courts.

Mortgage. See chapter on Mortgages.

Mortmain. Literally, a dead hand. In England, real property granted or devised to a religious corporation could not pass out of its possession by death, because a corporation does not die; and statutes of *mortmain* were passed, impeding such grants or sales.

Movables. Personal chattels which a man can carry with him wherever he goes.

Mulct. A fine imposed for some offence.

Municipal. Of or belonging to a city; but municipal law is the name given to the system of law of any one nation or State, as distinguished from international law.

Murder. The wilful killing of any person with malice aforethought. In most of our States murder is defined as of various degrees, according to the circumstances which indicate the character of the malice.

Mutiny. The unlawful resistance of a superior officer by sedition or revolt, in the army or navy, or on board of any vessel.

N.

Natural Children. Children born out of wedlock.

Naturalization. Conferring citizens' rights on foreigners.

Navigable. All navigable waters are subject to the use of the public, as navigable highways, the soil beneath them remaining the property of the riparian proprietors, or of the State. Navigable waters are in this country held to be all those capable of floating vessels, boats, logs, rafts, or any products of the country through which they flow.

Nisi Prius. A *nisi prius* term is that held by a court for the trial of cases by a jury.

Nonage. Minority, or a less age than twenty-one years. See chapter on Infants.

Nonsuit. Usually means an abandonment of his cause by the plaintiff, whereupon a judgment is entered against him.

Notary Public. An officer, appointed variously under the laws of different States, whose acts are respected by the law-merchant and the law of nations, and hence have force out of their own State or country.

Novation. The substitution of a new debt or obligation for a former one, which it extinguishes.

Nuncupative Will. A will declared orally before witnesses, by a testator when dying, and afterwards reduced to writing.

O.

Obligation. In law, is much the same thing as a bond. Obligor is he who enters into the obligation; obligee, he in whose favor it is contracted.

Ordinance. A rule, or order, or law. Usually applied to the laws of a city.

Ordinary. The name given in some of our States to the officer elsewhere called a surrogate or judge of probate.

Outrage. A great wrong or injury to the person, property, rights, or honor of another.

P.

Pandects. The name of a compilation of the civil law, made by the Emperor Justinian, A.D. 533. It is sometimes called the Digest.

Panel. Usually means, in law, the body of jurors who are impanelled to try a case; also the whole list returned by the sheriff.

Part Owners. In law, is usually applied to two or more persons, who are not partners, but who own a vessel together.

Partial Loss. See Average.

Partition. The division of lands, tenements, or hereditaments, goods and chattels, between persons who own them as co-proprietors. It is usually applied to the division of estates among such persons.

Partnership. See chapter on Partnership.

Passport. A document by which the Secretary of State certifies that the bearer, who is described therein, is a citizen of the United States.

Patent, or Letters-patent. Is the grant by the government to some person of an exclusive right to make and sell some new and useful invention made by him. He to whom a patent is granted is called a patentee.

Payment. See chapter on Payment.

Penitentiary. A prison or place of confinement for convicted criminals.

Per Capita. A Latin phrase, opposed to *per stirpes*. Descendants of a deceased take *per capita* when they are all counted as individuals, and they take *per stirpes*, or *by right of representation*, when a certain number of them take together what their deceased parent would have taken.

Peremptory Challenge. A challenge of a juror, which means a refusal to permit him to sit on the trial, allowed to certain criminals without showing cause, up to a certain number of jurors.

Perils of the Sea. A phrase used in bills of lading, and in policies of insurance, which includes all the dangers naturally incident to navigation. It has been held in this country to mean and include *perils of the river*.

Perishable Goods. Goods which easily decay and lose their value by being kept. Mainly used in insurance law.

Perjury. A wilfully false statement, by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

Piracy. Any forcible robbery or deprivation, on the high seas, done without lawful authority, and with wrongful purpose. A pirate is considered in law the enemy of the human race, and all men may attack him.

Plea. In conversation, this word is often used as meaning an argument in court. In law, it means the special written answer, showing why an action is not maintainable.

Pledge, or Pawn. A bailment or delivery of personal property as security for some debt or undertaking.

Police. Officers appointed to maintain public peace among persons are called officers of the police; but the word is sometimes used as meaning the general care of a city or other place for the same purpose, or the rules and ordinances made therefor.

Policy of Insurance. The instrument whereby insurance is made against perils of the sea, or fire, or accident, or on life.

Poll. An old word signifying head; thus a poll-tax is that imposed upon the people, at so much a head, equally.

Posse-comitatus. This means the power of the county. A sheriff or other peace officer has a right to call every male person in the county to his aid, for the purpose of preserving the public peace, excepting only those too infirm of body or mind to assist.

Post. After. An instrument is post-dated if it has a date subsequent to that at which it is actually made.

Post-marks. Are received in law as evidence of the fact and the time of a letter passing through the post-office.

Pound. The place which is inclosed by public authority, where stray animals may be placed, until reclaimed according to law.

Precept. In law, means a writ directed to some officer, commanding him to do something.

Premium. In the law of insurance, is the consideration paid or promised, for the insurance.

Presumption. An inference of the law from certain facts, of some other fact or proposition.

Prima Facie. Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contradicted.

Primogeniture. The right of primogeniture gives an estate to the eldest son in preference to the other children. It does not exist in the United States.

Principal. See chapter on Agency.

Privateer. A vessel owned by private individuals, and armed by them, but authorized by a belligerent government to carry on maritime war against the enemy.

Prize. A vessel or goods of an enemy taken and detained at sea, by the authority of a belligerent power, to be sent into some convenient port for adjudication.

Process. The method which the law uses to compel compliance with the commands of a court. In patent law this word signifies the art or the method by which a result that is patented is produced.

Proctor. In courts of admiralty, what an attorney or solicitor is in other courts.

Promissory Note. See chapter on Notes and Bills.

Prosecutions. The means and method of bringing a supposed criminal to justice by courts of law.

Protest. The act of a notary public, made on the dishonor of negotiable paper, by which it is declared that all parties to the paper will be held responsible to the holder for all damages. Also, in maritime law, a statement by the master of a vessel, duly attested by a competent person, in which the circumstances of a voyage or an accident by which the ship has sustained injury, are fully described.

Proxy. A person representing another with the right of voting. It is also used as the name of the instrument by which a person is so appointed and authorized.

Putative. Reputed or supposed to be. The word is most commonly applied to the father of an illegitimate child.

Q.

Quash. To overthrow, dismiss, or annul legal proceedings.

Quo Warranto. The writ or process by which the government inquires by what right or warrant a person or corporation holds an office or a right, for the purpose of dispossessing him of it, if not in lawful possession.

Quorum. The number of persons belonging to an assembly, society, or other body who must be present that the business may be lawfully transacted.

R.

Ratification. Giving force to a contract made by the person in question but not now in force, or by another man as his agent.

Real Property. Land and whatever is built upon or growing upon the same, whether it be on or beneath the surface or above the surface.

Receiver. Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

Recognizance. An obligation of record which a person enters into before a court or officer having authority to receive it, with a condition which requires him to do some specified act; usually, to appear in court at a certain time or on a certain event.

Recoupment. A law term, recently introduced into practice, and meaning much the same as a set-off against or a reduction from the claim of a plaintiff.

Reference. See chapter on Arbitration.

Remainder. When a grant or will creates a particular estate in one person, which will cease on a certain event, and then gives the estate over to another, this latter part of the estate is called the remainder. It may be contingent, when the event may never take place; or vested, when the remainder-man acquires an immediate interest in the estate, although it is to be enjoyed only when the event happens.

Rent. See chapter on Lease.

Replevin. That form of action by which a plaintiff seeks to recover the possession of personal chattels which have been taken from him unlawfully.

Reprieve. The withdrawing of a sentence of a criminal, which delays execution for a certain time.

Rescission. The annulling or dissolution of contracts by mutual consent, or by one party because of the breach of the contract by the other.

Rescue. A forcible deliverance of a prisoner from the custody of the law by a third person.

Residuary Clause. That part of the will by which all of the property is disposed of which remains after satisfying devises and bequests. Residuary legacy is the remainder of the property after specific bequests or legacies.

Respondent. In equity law, the person who answers to a bill or complaint.

Retainer. Usually means the fee by which a client engages an attorney-at-law to do certain business for him.

Revolt. The endeavor of one or more of the crew of a vessel to overthrow the legitimate authority of those in command.

Right. Means, in law, a claim which is founded upon law and fact.

Riot. A disturbance of the peace, by three or more persons conspiring to raise a tumult, or do some wrong thing, in a violent and turbulent manner.

Riparian Proprietors. Those who own the land upon the shore or boundary of the sea, or a lake or a watercourse. Generally a riparian proprietor owns the bed of the river adjoining his land, as far as the thread or central line of the stream.

Robbery. The forcible and wrongful taking from the person of another of goods or money, and putting him in fear. Threats may be violence enough to make the offence robbery.

S.

Sale. See chapter on Sales of Personal Property.

Salvage. Property saved from a peril of the sea; or compensation given by an admiralty court for service rendered in saving it.

Scroll. In law, is a mark used in the place of a seal; sometimes spelled scrall.

Seal. An impression upon any impressible substance; or a piece of paper pasted on with intent to make a seal of it.

Search-warrant. This is addressed to an officer, and requires him to search a house or place therein specified, for property alleged to have been stolen.

Seaworthiness. The fitness of a vessel in all respects of materials, equipment, and construction, for the service in which it is employed.

Sedition. Means, in criminal law, the raising of disturbances or commotions in the State.

Seisin. Possession of land by one who claims a freehold interest therein.

Servient. In the law of easements, if a certain estate has a right over or against another estate, as a right of drainage through it, the estate to which the right is attached is *dominant*, and the estate against which the right operates is *servient*.

Set-off. A demand by a defendant, against a plaintiff, by which he seeks to reduce or destroy his claim.

Sign or Signature. The writing of a man's name, as a sign or token that he assents to the instrument, or that it is his.

Slander. *Unpublished* and untruthful words injurious to another.

Solicitor. Means, in chancery courts, what an attorney does in other courts.

Specialty. A writing sealed and delivered, wherein an agreement or obligation is stated.

Specific Performance. The fulfilment or performance of a contract by the party bound to perform it. This a court of equity will compel, if sufficient reasons be shown.

Specification. In patent law, a specific and detailed account of the invention to be patented.

Statute. A law enacted by a legislative power.

Stoppage in Transitu. See chapter on Sales.

Subornation of Perjury. The inducing or procuring a person to commit legal perjury.

Subpœna. A writ or process summoning a person to appear and give testimony, or to submit himself to what the court may order.

Suffrage. The act of voting; the vote itself.

Suit. Synonymous with action at law.

Sunday. The first day of the week. The legal name of this day is the Lord's day. Generally it begins at twelve o'clock on the night between Saturday and Sunday, and continues twenty-four hours. In some of the New England States it begins at sunsetting on Saturday, and ends at sunsetting on Sunday.

Surety. See chapter on Guaranty.

Surrogate. A term used in some States to denote the officer in other States called judge of probate or ordinary.

T.

Tenant. See chapter on Leases.

Tender. A legal tender is that which the law of a State makes competent to be paid as money, and with the effect of money.

Tenure. The manner in which or by which a man holds an estate in lands.

Testament. Another name for a will. The testator is one who has made a will.

Title-deeds. Deeds which are evidences of the title of him who owns an estate.

Tort. A private wrong or injury other than the breach of a contract.

Trade-marks. A mark which a tradesman puts upon goods that he has manufactured, by way of symbol, emblem, or sign that they were made by him or for him, and that he claims an exclusive right to sell them. See chapter on Trade-marks.

Trespass. Any wrongful act of one person whereby another person is injured.

Trust. Is, in law, a right or a property which one person holds for the benefit of another. The person holding it is called the trustee, and he for whose benefit it is held is called the *cestui que trust*, or, better, the beneficiary.

Trustee Process. A process by which goods or credits of a debtor in the hands of a third person may be reached by an attaching creditor; it is similar to the garnishee process. See chapter on Recovery of Debts.

U.

Usury. See chapter on Interest and Usury.

V.

Vagabond, or **Vagrant.** One who wanders about idly, and with no home, and begs, and will not work.

Verdict. The unanimous decision made by a jury and announced to the court.

Voucher. The written evidences of the truth of entries or charges.

W.

Waiver. The abandonment of a right, or a refusal to accept it.

Ward. See chapter on Guardian and Ward.

Warranty. See chapter on Sales.

Way. A right of way is the privilege which some person, or a certain description of persons, have of going over another man's land.

Will. See chapter on Wills.

Witness. One who testifies in court under oath or affirmation to what he knows. Also one who signs his name to an instrument, in evidence that it was executed in his presence; he is then called an attesting or subscribing witness.

Wreck. Commonly used as meaning a vessel that is cast away. In maritime law, it means the vessel or goods cast away on land by the sea, or found at low water, between high and low water mark.

Writ. A written precept issued by a competent court in the name of the State, commanding the person or officer to whom it is addressed to do what is required therein. It is usually attested by a judge, and countersigned by the clerk of his court.

APPENDIX.

FORM FOR TAKING DEPOSITIONS.

Deposition of witnesses taken this day of , 19 , at the office of , in the town of , county of , State of , pursuant to the annexed notice, to be read in evidence on behalf of the plaintiff (or defendant) in a certain suit now pending in the [*here state the court in which the case is pending*], in the State of , wherein A. B. is plaintiff, and C. D. defendant.

Present: E. F., attorney (*or counsel*) for plaintiff; G. H., attorney (*or counsel*) for defendant.

I. J., a witness on behalf of the plaintiff, being of lawful age, and being by me first duly sworn, deposes and says, in response to questions propounded by E. F., counsel (or attorney) for the plaintiff (or defendant):

1st Question — What is your name, age, residence, and occupation?

Answer,

2d Question — Do you know the parties to this suit?

Answer,

[*Continue the questions until conclusion of examination in chief, and, in writing the answers, use the identical words of the witness.*]

And being cross-examined by G. H., counsel (or attorney) for defendant (or plaintiff), the said witness deposes and says:

[*Write questions and answers as before.*]

And being re-examined by counsel (or attorney) for the plaintiff (or defendant), the said witness further deposes and says:

[*Write questions and answers as before.*]

And further this deponent saith not.

(Signature of witness.)

[*If there be more than one witness, continue as follows:*]

And at the same time and place came K. L., another witness on behalf of the plaintiff, who, being of lawful age (*etc., same as above*).

No other witness appearing, the further taking of these depositions is continued until to-morrow, at the same place, and between the same hours.

(*Signature, etc., of official.*)

Office of , in the town of , county of , State of
this day of , 19 .

Present: E. F., attorney for plaintiff; G. H., attorney for defendant.

M. N., a witness on behalf of the plaintiff, being of lawful age, and by me first duly sworn, deposes and says, in response to questions propounded by counsel for the plaintiff (or defendant).

[*Write down questions and answers as in deposition of* I. J.]

And further this deponent saith not.

(Signature of witness.)

[*When the depositions have been taken, conclude with the following certificate:*]

State of , County of , to-wit:

I, , a Justice of the Peace (*or other official*), in and for the district (*town or township*) county of , State of , do certify that the foregoing depositions of I. J., K. L., and M. N., [*name all the witnesses*] were duly taken by me pursuant to the annexed notice for taking depositions to be read in behalf of the plaintiff (or defendant) in the cause of against , now pending in the [*here describe the court in which the suit is pending*], at the time and place, and within the hours in the annexed notice specified. [*If an adjournment was had, so state here, thus:*] the taking of said depositions, not having been completed on the first day appointed, were continued from day to day at the same place and between the same hours until completed.

I further certify that after the taking of the deposition of each witness the same was read to (or by) him and subscribed by him in my presence.

And I do further certify that, at the time of so taking the same, I was a Justice of the Peace (*Notary Public, or Commissioner appointed by the Governor, etc., as the case may be*) in and for the , in the State of , my commission bearing date , and expiring .

Given under my hand (*and Notarial Seal, or official seal, as the case may be*), this day of , 19 .

(*Signature, etc., of official.*)

Cost of taking depositions, $; paid by

After taking each deposition it should be read to the witness, or by him, and a memorandum should be made by the magistrate of any changes or corrections which the witness desires to make before signing. The witness should then sign the deposition in the magistrate's presence. If he refuses to sign that fact should be noted by the magistrate at the foot of the deposition and his return changed accordingly.

The questions on direct and cross-examination may be numbered separately; but in order to save confusion it is usually better to number them all consecutively as one series, giving the first cross-question the serial number following that of the last direct question, and so on.

FORM OF TAKING AFFIDAVITS.

Affidavit of A. B.

I, A. B., having been duly sworn, do depose and say that I am years of age, and reside in , in the county of , and State of that:

[Here state the facts to be embodied in the affidavit.]

(Signature of witness.)

State
County of } ss.

On this day of , 19 , at my office at , in the city of , in the county and State aforesaid, before me, the subscriber, a Notary Public (or other magistrate), duly commissioned in and for said county, personally appeared the above named , who subscribed the foregoing affidavit in my presence, and made solemn oath that the statements therein made by him are true [except such as are made on information and belief, and those he believes to be true.]

Witness my hand and notarial seal this day of , 19 .

Notary Public.

[Seal.]

If the affidavit is to be used in court it should be entitled thus:

Affidavit of A. B. to be used in a suit pending in the Court, for the County of , in the State of , in which C. D. is plaintiff and E. F. is defendant, and taken on behalf of the plaintiff (or defendant) in said suit

TABLES OF INTEREST AT SIX PER CENT.

$1	*$2*	*$3*	*$4*	*$5*	*Days.*	*$6*	*$7*	*$8*	*$9*	*$10*
					1					
					2					
					3	.	.	.	.	.1
					4	.	.	.1	.1	.1
					5	.1	.1	.1	.1	.1
				1	6	.1	.1	.1	.1	.1
				1	7	.1	.1	.1	.1	.1
			1	.1	8	.1	.1	.1	.1	.1
			1	.1	9	.1	.1	.1	.1	.2
			1	.1	10	.1	.1	.1	.2	.2
		1	.1	.1	11	.1	.1	.1	.2	.2
		1	.1	.1	12	.1	.1	.2	.2	.2
		1	.1	.1	13	.1	.2	.2	.2	.2
		1	.1	.1	14	.1	.2	.2	.2	.3
	1	.1	.1	.1	15	.2	.2	.2	.2	.3
	1	.1	.1	.1	16	.2	.2	.2	.2	.3
	1	.1	.1	.1	17	.2	.2	.2	.3	.3
	1	.1	.1	.2	18	.2	.2	.2	.3	.3
	1	.1	.1	.2	19	.2	.2	.3	.3	.3
	1	.1	.1	.2	20	.2	.2	.3	.3	.3
	1	.1	.1	.2	21	.2	.2	.3	.3	.4
	1	.1	.1	.2	22	.2	.3	.3	.3	.4
	1	.1	.2	.2	23	.2	.3	.3	.3	.4
	1	.1	.2	.2	24	.2	.3	.3	.4	.4
	1	.1	.2	.2	25	.3	.3	.3	.4	.4
	1	.1	.2	.2	26	.3	.3	.3	.4	.4
	1	.1	.2	.2	27	.3	.3	.4	.4	.5
	1	.1	.2	.2	28	.3	.3	.4	.4	.5
	1	.1	.2	.2	29	.3	.3	.4	.4	.5
1	.1	.2	.2	.3	30	.3	.4	.4	.5	.5
1	.1	.2	.2	.3	33	.3	.4	.4	.5	.6
1	.1	.2	.2	.3	34	.3	.4	.5	.5	.6
1	.2	.3	.4	.5	60	.6	.7	.8	.9	.10
1	.2	.3	.4	.5	63	.6	.7	.8	.9	.11
1	.2	.3	.4	.5	64	.6	.7	.9	.10	.11
2	.3	.5	.6	.8	90	.9	.11	.12	.14	.15
2	.3	.5	.6	.8	93	.9	.11	.12	.14	.16
2	.3	.5	.6	.8	94	.9	.11	.13	.14	.16
					Months.					
2	.4	.6	.8	.10	4	.12	.14	.16	.18	.20
3	.5	.8	.10	.13	5	.15	.18	.20	.23	.25
3	.6	.9	.12	.15	6	.18	.21	.24	.27	.30
4	.7	.11	.14	.18	7	.21	.25	.28	.32	.35
4	.8	.12	.16	.20	8	.24	.28	.32	.36	.40
5	.9	.14	.18	.23	9	.27	.32	.36	.41	.45
5	.10	.15	.20	.25	10	.30	.35	.40	.45	.50
6	.11	.17	.22	.28	11	.33	.39	.44	.50	.55
6	.12	.18	.24	.30	12	.36	.42	.48	.54	.60
12	.24	.36	.48	.60	24	.72	.84	.96	1.08	1.20
18	.36	.54	.72	.90	36	1.08	1.26	1.44	1.62	1.80
24	.48	.72	.96	1.20	48	1.44	1.68	1.92	2.16	2.40

TABLE OF INTEREST AT SIX PER CENT.

$20	*$30*	*$40*	*$50*	*$60*	*Days.*	*$70*	*$80*	*$90*	*$100*	*$200*
	1	.1	.1	.1	1	.1	.1	.2	.2	.3
1	.1	.1	.2	.2	2	.2	.3	.3	.3	.7
1	.2	.2	.3	.3	3	.4	.4	.5	.5	.10
1	.2	.3	.3	.4	4	.5	.5	.6	.7	.13
2	.3	.3	.4	.5	5	.6	.7	.8	.8	.17
2	.3	.4	.5	.6	6	.7	.8	.9	.10	.20
2	.4	.5	.6	.7	7	.8	.9	.11	.12	.23
3	.4	.5	.7	.8	8	.9	.11	.12	13	.27
3	.5	.6	.8	.9	9	.11	.12	.14	.15	.30
3	.5	.7	.8	.10	10	.12	.13	.15	.17	.33
4	.6	.7	.9	.11	11	.13	.15	.17	.18	.37
4	.6	.8	.10	.12	12	.14	.16	.18	.20	.40
4	.7	.9	.11	.13	13	.15	.17	.20	.22	.43
5	.7	.9	.12	.14	14	.16	.19	.21	.23	.47
5	.8	.10	.13	.15	15	.18	.20	.23	.25	.50
5	.8	.11	.13	.16	16	.19	21	.24	.27	.53
6	.9	.11	.14	.17	17	.20	.23	.26	.28	.57
6	.9	.12	.15	.18	18	.21	.24	.27	.30	.60
6	.10	.13	.16	.19	19	.22	.25	.29	.32	.63
7	.10	.13	.17	.20	20	.23	.27	.30	.33	.67
7	.11	.14	.18	.21	21	.25	.28	.32	.35	.70
7	.11	.15	.18	.22	22	.26	.29	.33	.37	.73
8	.12	.15	.19	.23	23	.27	.31	.35	.38	.77
8	.12	.16	.20	.24	24	.28	.32	.36	.40	.80
8	.13	.17	.21	.25	25	.29	.33	.38	.42	.83
9	.13	.17	.22	.26	26	.30	.35	.39	.43	.87
9	.14	.18	.23	.27	27	.32	.36	.41	.45	.90
9	.14	.19	.23	.28	28	.33	.37	.42	.47	.93
10	.15	.19	.24	.29	29	.34	.39	.44	.48	.97
10	.15	.20	.25	.30	30	.35	.40	.45	.50	1.00
11	.17	.22	.28	.33	33	.39	.44	.50	.55	1.10
11	.17	.23	.28	.34	34	.40	.45	.51	.57	1.13
20	.30	.40	.50	.60	60	.70	.80	.90	1.00	2.00
21	.32	.42	.53	.63	63	.74	.84	.95	1.05	2.10
21	.32	.43	.53	.64	64	.75	.85	.96	1.07	2.13
30	.45	.60	.75	.90	90	1.05	1.20	1.35	1.50	3.00
31	.47	.62	.78	.93	93	1.09	1.24	1.40	1.55	3.10
31	.47	.63	.78	.94	94	1.10	1.25	1.41	1.57	3.13
					Months.					
40	.60	.80	1.00	1.20	4	1.40	1.60	1.80	2.00	4.00
50	.75	1.00	1.25	1.50	5	1.75	2.00	2.25	2.50	5.00
60	.90	1.20	1.50	1.80	6	2.10	2.40	2.70	3.00	6.00
70	1.05	1.40	1.75	2.10	7	2.45	2.80	3.15	3.50	7.00
80	1.20	1.60	2.00	2.40	8	2.80	3.20	3.60	4.00	8.00
90	1.35	1.80	2.25	2.70	9	3.15	3.60	4.05	4.50	9.00
1.00	1.50	2.00	2.50	3.00	10	3.50	4.00	4.50	5.00	10.00
1.10	1.65	2.20	2.75	3.30	11	3.85	4.40	4.95	5.50	11.00
1.20	1.80	2.40	3.00	3.60	12	4.20	4.80	5.40	6.00	12.00
2.40	3.60	4.80	6.00	7.20	24	8.40	9.60	10.80	12.00	24.00
3.60	5.40	7.20	9.00	10.80	36	12.60	14.40	16.20	18.00	36.00
4.80	7.20	9.60	12.00	14.40	48	16.80	19.20	21.60	24.00	48.00

TABLES OF INTEREST AT SIX PER CENT.

$300	*$400*	*$500*	*$600*	*Days*	*$700*	*$800*	*$900*	*$1000*
5	.07	.08	.10	1	.12	.13	.15	.17
10	.13	.17	.20	2	.23	.27	.30	.33
15	.20	.25	.30	3	.35	.40	.45	.50
20	.27	.33	.40	4	.47	.53	.60	.67
25	.33	.42	.50	5	.58	.67	.75	.83
30	.40	.50	.60	6	.70	.80	.90	1.00
35	.47	.58	.70	7	.82	.93	1.05	1.17
40	.53	.67	.80	8	.92	1.07	1.20	1.33
45	.60	.75	.90	9	1.05	1.20	1.35	1.50
50	.67	.83	1.00	10	1.17	1.33	1.50	1.67
55	.73	.92	1.10	11	1.28	1.47	1.65	1.83
60	.80	1.00	1.20	12	1.40	1.60	1.80	2.00
65	.87	1.08	1.30	13	1.52	1.73	1.95	2.17
70	.92	1.17	1.40	14	1.63	1.87	2.10	2.33
75	1.00	1.25	1.50	15	1.75	2.00	2.25	2.50
80	1.07	1.33	1.60	16	1.87	2.13	2.40	2.67
85	1.13	1.42	1.70	17	1.98	2.27	2.55	2.83
90	1.20	1.50	1.80	18	2.10	2.40	2.70	3.00
95	1.27	1.58	1.90	19	2.22	2.53	2.85	3.17
1.00	1.33	1.67	2.00	20	2.33	2.67	3.00	3.33
1.05	1.40	1.75	2.10	21	2.45	2.80	3.15	3.50
1.10	1.47	1.83	2.20	22	2.57	2.92	3.30	3.67
1.15	1.53	1.92	2.30	23	2.68	3.07	3.45	3.83
1.20	1.60	2.00	2.40	24	2.80	3.20	3.60	4.00
1.25	1.67	2.08	2.50	25	2.92	3.33	3.75	4.17
1.30	1.73	2.17	2.60	26	3.03	3.47	3.90	4.33
1.35	1.80	2.25	2.70	27	3.15	3.60	4.05	4.50
1.40	1.83	2.33	2.80	28	3.27	3.73	4.20	4.67
1.45	1.92	2.42	2.90	29	3.38	3.87	4.35	4.83
1.50	2.00	2.50	3.00	30	3.50	4.00	4.50	5.00
1.65	2.20	2.75	3.30	33	3.85	4.40	4.95	5.50
1.70	2.27	2.83	3.40	34	3.97	4.53	5.10	5.67
3.00	4.00	5.00	6.00	60	7.00	8.00	9.00	10.00
3.15	4.20	5.25	6.30	63	7.35	8.40	9.45	10.50
3.20	4.27	5.33	6.40	64	7.47	8.53	9.60	10.67
4.50	6.00	7.50	9.00	90	10.50	12.00	13.50	15.00
4.65	6.20	7.75	9.30	93	10.85	12.40	13.95	15.50
4.70	6.72	7.83	9.40	94	10.97	12.53	14.10	15.67
				Months.				
6.00	8.00	10.00	12.00	4	14.00	16.00	18.00	20.00
7.50	10.00	12.50	15.00	5	17.50	20.00	22.50	25.00
9.00	12.00	15.00	18.00	6	21.00	24.00	27.00	30.00
10.50	14.00	17.50	21.00	7	24.50	28.00	31.50	35.00
12.00	16.00	20.00	24.00	8	28.00	32.00	36.00	40.00
13.50	18.00	22.50	27.00	9	31.50	36.00	40.50	45.00
15.00	20.00	25.00	30.00	10	35.00	40.00	45.00	50.00
16.50	22.00	27.50	33.00	11	38.50	44.00	49.50	55.00
18.00	24.00	30.00	36.00	12	42.00	48.00	54.00	60.00
36.00	48.00	60.00	72.00	24	84.00	96.00	108.00	120.00
54.00	72.00	90.00	108.00	36	126.00	144.00	162.00	180.00
72.00	96.00	120.00	144.00	48	168.00	192.00	216.00	240.00

TABLE OF INTEREST AT SEVEN PER CENT.

DOLL'S.	DAYS.																												
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
1.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
2....	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3....	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2
4....	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	3
5....	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	3	3	3	3
6....	0	0	0	0	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	3	3	3	3	3	3	3	3
7....	0	0	0	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	3	3	3	3	3	3	3	4	4	4	4
8....	0	0	0	1	1	1	1	1	1	2	2	2	2	2	2	2	3	3	3	3	3	3	4	4	4	4	4	4	5
9....	0	0	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	3	3	4	4	4	4	4	4	5	5	5	5
10....	0	0	1	1	1	1	1	2	2	2	2	2	3	3	3	3	3	4	4	4	4	4	4	5	5	5	5	5	6
11....	0	0	1	1	1	1	1	2	2	2	2	3	3	3	3	3	4	4	4	4	4	5	5	5	5	6	6	6	6
12 ...	0	1	1	1	1	1	2	2	2	2	3	3	3	3	4	4	4	4	4	5	5	5	5	6	6	6	6	7	7
13....	0	1	1	1	1	2	2	2	2	3	3	3	3	4	4	4	4	5	5	5	5	6	6	6	6	7	7	7	7
14....	0	1	1	1	1	2	2	2	2	3	3	3	4	4	4	4	5	5	5	5	6	6	6	7	7	7	7	8	8
15....	0	1	1	1	1	2	2	2	3	3	3	4	4	4	4	5	5	5	6	6	6	6	7	7	7	8	8	8	8
16....	0	1	1	1	2	2	2	2	3	3	3	4	4	4	5	5	5	6	6	6	7	7	7	7	8	8	8	9	9
17....	0	1	1	1	2	2	2	3	3	3	4	4	4	5	5	5	6	6	6	7	7	7	8	8	8	9	9	9	10
18....	0	1	1	1	2	2	2	3	3	4	4	4	5	5	5	6	6	6	7	7	7	8	8	8	9	9	9	10	10
19....	0	1	1	1	2	2	3	3	3	4	4	4	5	5	6	6	6	7	7	7	8	8	8	9	9	10	10	10	11
20....	0	1	1	2	2	2	3	3	4	4	4	5	5	5	6	6	7	7	7	8	8	9	9	9	10	10	11	11	11
21....	0	1	1	2	2	2	3	3	4	4	4	5	5	6	6	7	7	7	8	8	9	9	9	10	10	11	11	11	12
22....	0	1	1	2	2	3	3	3	4	4	5	5	6	6	6	7	7	8	8	9	9	9	10	10	11	11	[illegible]	12	11
25....	1	1	1	2	2	3	3	4	4	5	5	6	6	7	7	8	8	9	9	10	10	11	11	12	12	13	13	14	14
30....	1	1	2	2	3	4	4	5	5	6	6	7	8	8	9	9	10	11	11	12	12	13	13	14	15	15	16	16	17
40....	1	2	2	3	4	5	5	6	7	8	9	9	10	11	12	12	13	14	15	16	16	17	18	19	19	20	21	22	23
50....	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18	19	20	21	22	23	24	25	26	27	28
60 ...	1	2	4	5	6	7	8	9	11	12	13	14	15	16	18	19	20	21	22	23	25	26	27	28	29	30	32	33	34
70....	1	3	4	5	7	8	10	11	12	14	15	16	18	19	20	22	23	25	26	27	29	30	31	33	34	35	36	38	39
80....	2	3	5	6	8	9	11	12	14	16	17	19	20	22	23	25	26	28	30	31	33	34	36	37	39	46	42	44	45
90....	2	4	5	7	9	11	12	14	16	18	19	21	23	25	26	28	30	32	33	35	37	39	40	42	44	40	47	49	51
100 ...	2	4	6	8	10	12	14	16	18	19	21	23	25	27	29	31	33	35	37	39	41	43	45	47	49	51	53	54	56

DOLL'S.	MONTHS.										
	1	2	3	4	5	6	7	8	9	10	11
1....	1	1	2	2	3	4	4	5	5	6	6
2....	1	2	4	5	6	7	8	9	11	12	13
3....	2	4	5	7	9	11	12	14	15	18	19
4....	2	5	7	9	12	14	16	19	21	23	26
5....	3	6	9	12	15	18	20	23	26	29	32
6...	4	7	11	14	18	21	25	28	32	35	39
7....	4	8	12	16	20	25	29	38	36	41	44
8....	5	9	14	19	23	28	33	37	42	47	51
9....	5	11	16	21	26	32	37	42	47	53	57
10....	6	12	18	23	29	35	41	47	53	58	64
11....	6	13	19	26	32	39	45	51	57	64	70
12 ...	7	14	21	28	35	42	49	56	63	70	77
13....	8	15	23	30	38	46	53	61	68	76	83
14....	8	16	25	38	41	49	57	65	74	82	90
15....	9	18	26	35	44	53	61	70	78	88	96
16...	9	19	28	37	47	56	65	75	84	93	103
17....	10	20	30	40	50	60	69	79	89	99	109
18....	11	21	32	42	53	63	74	84	95	105	116
19....	11	22	33	44	55	67	78	89	99	111	121
20....	12	23	35	47	58	70	82	93	105	117	128
21....	12	25	37	49	61	74	86	98	110	123	134
22...	18	26	39	51	64	77	90	103	116	128	141
25 ...	15	29	44	58	73	88	102	117	131	146	160
30....	18	35	53	70	88	105	128	140	158	175	193
40 ...	23	47	70	93	117	140	163	187	210	233	257
50 ...	29	58	88	117	146	175	204	233	262	292	321
60....	35	70	105	140	175	210	245	280	315	350	385
70....	41	82	123	163	204	245	286	327	368	408	449
80 ...	47	93	140	187	233	280	327	373	420	467	513
90....	58	105	158	210	263	315	368	420	472	525	577
100....	58	117	175	233	292	350	408	467	525	583	642

B. 1803462

110257